



## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

#### 30 CFR Parts 550, 556, and 590

[Docket ID: BOEM–2023–0027]

RIN 1010–AE14

#### Risk Management and Financial Assurance for OCS Lease and Grant Obligations

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** The Department of the Interior (the Department or DOI), acting through BOEM, proposes to modify its criteria for determining whether oil, gas, and sulfur lessees, right-of-use and easement (RUE) grant holders, and pipeline right-of-way (ROW) grant holders may be required to provide bonds or other financial assurance above the current regulatorily prescribed base bonds to ensure compliance with their Outer Continental Shelf Lands Act (OCSLA) obligations. This proposed rule would also remove existing restrictive provisions for third-party guarantees and decommissioning accounts and would add new criteria under which a bond or third-party guarantee that was provided as supplemental financial assurance may be canceled. Additionally, this proposed rule would clarify bonding requirements for RUEs serving Federal leases. Based on the proposed framework, BOEM estimates that the aggregate amount of supplemental financial assurance required of lessees and grant holders under this proposed rulemaking available to the U.S. government for decommissioning activities would increase by an estimated \$9.2 billion over current levels. This value represents less than one-quarter of all offshore decommissioning liabilities, which is currently estimated at \$42.8 billion. This proposed rulemaking would not apply to renewable energy activities.

**DATES:** BOEM must receive your comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. BOEM has the

discretion not to consider comments received after this date. The Office of Management and Budget (OMB) and BOEM must receive your comments on the information collection (IC) burden in this rulemaking on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The IC burden comment opportunity does not affect the deadline for the public to comment to BOEM on the proposed regulations.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. In your comments, please reference “Risk Management and Financial Assurance for OCS Lease and Grant Obligations, RIN 1010–AE14.” Please include your name, and phone number or email address, so we can contact you if we have questions regarding your submission.

- *Federal rulemaking portal:* <https://www.regulations.gov>. In the entry titled, “Enter Keyword or ID,” enter BOEM-2023-0027 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking.

- *Mail or delivery service:* Send comments on the BOEM proposed rule to the Department of the Interior, Bureau of Ocean Energy Management, Office of Regulations, Attention: Kelley Spence, 45600 Woodland Road, Mailstop VAM-BOEM DIR, Sterling, VA 20166.

Submit comments on the IC in this proposed rule to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). From this main webpage, you can find and submit comments on this particular information collection by proceeding to the boldface heading “Currently under Review,” selecting “Department of the Interior” in the “Select Agency” pull down menu, clicking “Submit,” then, checking the box “Only Show ICR for Public Comment” on the next webpage, scrolling to this proposed rule, and clicking the “Comment” button at the right margin. Or, you may use the search function to locate the IC request related to the proposed rule on the main webpage. Please provide a copy of your comments to the Information Collection Clearance Officer, Office of Regulations, Bureau of Ocean Energy Management, Attention: Anna Atkinson, 45600 Woodland Road, Sterling, Virginia 20166; or by email to

anna.atkinson@boem.gov. Please reference OMB Control Number 1010-0006 in the subject line of your comments.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking (1010-AE14). All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Availability of Comments:” heading of the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Kelley Spence, Office of Regulations, BOEM, at [kelly.spence@boem.gov](mailto:kelly.spence@boem.gov) or at (984) 298-7345; or Karen Thundiyil, Chief, Office of Regulations, BOEM, at [Karen.Thundiyil@boem.gov](mailto:Karen.Thundiyil@boem.gov) or at (202) 742-0970.

*To obtain a copy of the information collection supporting statement, contact:*  
Information Collection Clearance Officer, Office of Regulations, Bureau of Ocean Energy Management, Attention: Anna Atkinson, at [anna.atkinson@boem.gov](mailto:anna.atkinson@boem.gov) or at (703) 787-1025.

**SUPPLEMENTARY INFORMATION:**

*Public Availability of Comments:* BOEM may post all submitted comments to [regulations.gov](http://www.regulations.gov). Before including your name, return address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe in such cover letter any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. While you can ask us in

your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. Even if BOEM withholds your information in the context of this rulemaking, your submission is subject to the Freedom of Information Act (FOIA) and any relevant court orders, and if your submission is requested under the FOIA or such court order, your information will only be withheld if a determination is made that one of the FOIA's exemptions to disclosure applies or if such court order is challenged. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law.

*Organization of this document.* The information in this preamble is organized as follows:

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## **I. Table of Acronyms and Terms**

Several acronyms and terms are included in this preamble. To ease the reading of this preamble and for reference purposes, we list the following acronyms and their meanings here.

ANCSA	Alaska Native Claims Settlement Act
ANPRM	Advance Notice of Proposed Rulemaking
BOEM	Bureau of Ocean Energy Management
BSEE	Bureau of Safety and Environmental Enforcement
DOI	Department of the Interior
E.O.	Executive Order
FASB	Financial Accounting Standards Board
FDIC	Federal Deposit Insurance Corporation
FR	Federal Register
GAAP	Generally Accepted Accounting Principles
GAO	Government Accountability Office
IC	Information Collection
INC	Incidents of Non-Compliance
IRFA	Initial Regulatory Flexibility Analysis
IRIA	Initial Regulatory Impact Assessment
MMS	Minerals Management Service
NAICS	North American Industry Classification System
NEPA	National Environmental Policy Act
NRSRO	Nationally Recognized Statistical Rating Organization
NTL	Notice to Lessees
OIRA	Office of Information and Regulatory Affairs (a component of OMB)
OMB	Office of Management and Budget
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
PRA	Paperwork Reduction Act
RIA	Regulatory Impact Analysis
RUE	Right-of-Use and Easement
ROW	Right-of-Way
SBA	Small Business Administration
SEC	Securities and Exchange Commission
S&P	Standard and Poor's
U.S.C.	United States Code

## **II. Executive Summary**

This proposed rule would require that the holders of interests in Outer Continental Shelf (OCS) leases and grants provide financial assurance for their own contractual and regulatory obligations, including decommissioning obligations, to prevent the Federal Government from incurring costs to perform those obligations and to avoid the environmental or safety hazards associated with delayed compliance. This approach adheres to the general principle that the private parties enjoying the benefit of producing the mineral resources of the OCS should not shift the cost of satisfying their contractual and environmental obligations to the public. Based on the proposed framework, BOEM estimates that the aggregate amount of supplemental financial assurance required of lessees and grant holders under this proposed rulemaking available to the U.S. government for decommissioning activities would increase by an estimated \$9.2 billion over current levels. This value represents less than one-quarter of all decommissioning liabilities, which is currently estimated at \$42.8 billion.

This proposed rule is intended to update BOEM's criteria for determining whether oil, gas, and sulfur lessees, RUE grant holders, and ROW grant holders may be required to provide surety bonds or other financial assurance above the prescribed base financial assurance to ensure compliance with OCSLA. Provisions of this proposed rulemaking would change the existing criteria used to determine whether supplemental financial assurance should be required of OCS oil and gas lessees and grantees. Under the existing regulations, BOEM considers five criteria in making this determination for lessees: financial capacity; projected financial strength; business stability; record of compliance with existing rules and regulations; and reliability. This rulemaking proposes to eliminate those five criteria and replace them with two new criteria: credit rating and the ratio of the value of proved oil and gas reserves on the lease to the lease decommissioning liability associated with those reserves.

Using the credit rating of the lessee (to determine its financial strength) and the value of proved oil and gas reserves available to meet future financial obligations, BOEM would not

require supplemental financial assurance in three cases. First, under this proposed rule, a lessee with an investment grade credit rating would not be required to post supplemental financial assurance beyond a base bond to cover its lease and regulatory obligations. These base bonds can range from \$50,000 for a lease-specific bond with no approved operational activity to \$3 million for an area-wide bond that includes a development production plan. Second, where there are multiple co-lessees on a lease, if any one co-lessee meets the credit rating threshold, none of the other co-lessees would be required to post supplemental financial assurance. Finally, for any lease on which all lessees are rated below investment grade, BOEM would next look to the value of the lease's proved oil and gas reserves relative to lease decommissioning obligations associated with the production of those reserves. For any such lease, if a lease has proved reserves with a value of at least three times that of the estimated decommissioning cost, no supplemental financial assurance would be required. In any case other than the three mentioned here, supplemental financial assurance would be mandatory.

Overall, this proposed rule would impose greater supplemental financial assurance requirements on lessees than the amounts currently required. This proposed rule also contains a provision that would allow phased-in compliance over a period of three years, which could ease burdens on individual lessees and operators in the short term.

This proposed rule would also make other less significant changes. This proposed rule would provide more specific bonding requirements for Federal RUEs and would remove restrictive provisions for third-party guarantees and decommissioning accounts. Finally, it would add new criteria under which supplemental bonds and third-party guarantees may be cancelled.

On October 16, 2020, BOEM proposed a joint rulemaking with the Bureau of Safety and Environmental Enforcement (BSEE) to update BOEM's financial assurance criteria and other BSEE-administered regulations. On January 20, 2021, President Biden signed Executive Order (E.O.) 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." This Executive order, among other things, instructs agencies to review

actions taken between January 20, 2017, and January 20, 2021, and consider publishing a notice of proposed rulemaking suspending, revising, or rescinding that action. Upon conducting such a review of the 2020 proposal and the record postdating the review, BOEM has decided, as an exercise of its judgment and expertise, not to move forward with the BOEM-administered portions of that 2020 proposed rulemaking. BOEM has instead decided to issue this new notice of proposed rulemaking to address its financial assurance policy concerns. BOEM is no longer considering any BOEM-related topics or proposals from that 2020 proposed joint rulemaking that are not discussed in this current proposed rule. BSEE finalized the BSEE-related provisions of the 2020 joint proposed rule on April 18, 2023 (88 FR 23569). This proposed rulemaking takes a new approach to update the financial assurance criteria to ensure that current lessees have sufficient resources to meet their lease and regulatory obligations, therefore providing more protection to the taxpayer. BSEE is expected to continue to exercise its regulatory authority to issue decommissioning orders to predecessor lessees, seek an appropriation, or intervene as necessary to address an environmental or safety risk, regardless of the outcome of this proposed rule. However, without this proposed rule (*i.e.*, without the financial assurance fully in place), it could take longer to arrange for decommissioning, which could result in additional environmental damage or increased obstacles to navigation. A reduction in decommissioning activity lead-time could reduce environmental damage, but BOEM cannot quantify this benefit in this rulemaking.

This proposed rulemaking would not apply to renewable energy activities.

### **III. Background of BOEM Regulations**

#### **A. BOEM Statutory and Regulatory Authority and Responsibilities**

BOEM's authority to promulgate this rulemaking is granted by section 5 of OCSLA, 43 U.S.C. 1334. That section authorizes the Secretary of the Interior (Secretary) to issue regulations to administer OCS leasing for mineral development. Section 5(a) of OCSLA (43 U.S.C. 1334(a)) authorizes the Secretary to "prescribe such rules and regulations as may be necessary to carry

out” the “provisions of [OCSLA] relating to the leasing of the” OCS. Section 5(b) of OCSLA (43 U.S.C. 1334(b)) provides that “compliance with regulations issued under” OCSLA must be a condition of “[t]he issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of” OCSLA.

43 U.S.C. 1338a reflects Congress’ intent to authorize BOEM to collect financial assurance by specifically addressing the forfeiture of bonds and financial assurances by an OCS permittee, lessee, or right-of-way holder that does not fulfill the requirements of its permit, lease, or right-of-way or does not comply with the regulations of the Secretary, which includes defaulting on decommissioning activities.

The Secretary, in Secretary’s Order 3299, as amended, delegated the authority to BOEM to carry out offshore conventional energy-related (*e.g.*, oil and gas) and renewable energy-related functions including, but not limited to, activities involving resource evaluation, planning, and leasing. Thus, BOEM is responsible for managing development of the Nation’s offshore energy and mineral resources in an environmentally and economically responsible way. Secretary’s Order 3299 also assigned authority to BSEE, including, but not limited to, enforcement of a lessee’s obligation to perform decommissioning. BSEE provides estimates of decommissioning costs to BOEM so that the financial assurance required by BOEM will be sufficient to cover the estimated cost to perform decommissioning, thereby protecting the Federal Government from incurring financial loss. While BOEM also has program oversight for the financial assurance requirements set forth in 30 CFR parts 551, 581, 582, and 585, this proposed rule pertains only to the financial assurance requirements for oil and gas or sulfur leases under 30 CFR part 556, associated RUE grants and ROW grants under 30 CFR part 550, and appeals of supplemental financial assurance demands under 30 CFR part 590.

## **B. History of Bonding Regulations and Guidance**

BOEM’s existing financial assurance requirements for oil and gas leases (30 CFR 556.900 through 556.907) and pipeline ROW grants (30 CFR 550.1011), published by BOEM’s

predecessor, the Minerals Management Service (MMS), on May 22, 1997 (62 FR 27948),<sup>1</sup> authorize the Regional Director to require bonding for oil and gas leases and pipeline ROW grants. Sections 556.900(a) and 556.901(a) and (b) require lease-specific or area-wide base bonds in prescribed amounts, depending on the level of activity on a lease or leases. Section 556.901(d) authorizes the Regional Director to require supplemental financial assurance for leases above the amounts for lease and area-wide base bonds prescribed in the regulations. Similarly, § 550.1011 authorizes the Regional Director to require an area-wide base surety bond in a prescribed amount and, when determined necessary, supplemental financial assurance above the prescribed amount, for ROW grants.

BOEM's existing bonding regulations for RUE grants (§§ 550.160 and 550.166), published by MMS on December 28, 1999 (64 FR 72756),<sup>2</sup> empower the Regional Director to require surety bonds or other financial assurance for RUE grants. Section 550.160(c) states that an applicant for a RUE serving an OCS lease "must meet bonding requirements." *See* 30 CFR 550.160(c). While no regulation prescribes a particular bond amount for a RUE that applies to an OCS lease, § 550.160 authorizes the Regional Director to require financial assurance if, and in the amount, the Regional Director determines necessary.

Section 550.166(a) requires an applicant for a RUE that serves a State lease to provide a base surety bond of \$500,000. Section 550.166(b) provides that the Regional Director may require supplemental financial assurance above the prescribed \$500,000 base surety bond from the holder of a such a RUE. MMS and now BOEM have employed the criteria used for determining whether supplemental financial assurance is required for leases to such determinations for RUE and ROW grants because specific criteria for grants do not exist in the

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<sup>1</sup> The 1997 rule amended 30 CFR parts 250 and 256; 30 CFR parts 550 and 556 did not exist at that time. BOEM published the current regulations in 30 CFR parts 550 and 556 on October 18, 2011, 76 FR 64432. However, the 2011 rule did not make any substantive changes to the bonding and financial assurance requirements that were adopted in 1997; thus, the 1997 rule represents the last substantive update to the regulatory provisions for lessees.

<sup>2</sup> The financial assurance regulations for RUE and ROW grants, then at §§ 250.160 and 250.166, were substantively modified in 1999. These provisions were renumbered in October 2011.

current regulations.

BOEM regulations at §§ 556.604(d) and 556.605(e) and BSEE regulations at § 250.1701 hold predecessors and current co-lessees responsible for decommissioning when a current lessee is unable to perform. The existing lease bonding regulations under § 556.901(d) provide five criteria<sup>3</sup> that the Regional Director uses to determine whether a lessee's potential inability to carry out present and future financial obligations warrants a demand for supplemental financial assurance. However, the existing regulations do not specifically describe how the agency weighs those criteria. To provide guidance, MMS issued Notice to Lessees (NTL) No. 98-18N, effective December 28, 1998, which provided details on how it would apply the five criteria. This NTL was superseded by NTL No. 2003-N06, effective June 17, 2003, and that NTL was later superseded by NTL No. 2008-N07, which was effective August 28, 2008, but which was superseded on September 12, 2016. The September 12, 2016, NTL was subsequently rescinded.

Pursuant to BOEM's practice under NTL No. 2008-N07, a lessee or grant holder that did not pass established financial thresholds<sup>4</sup> was required to provide supplemental financial assurance to cover its decommissioning liabilities. However, a lessee or grant holder that did pass such thresholds—including an analysis whether its cumulative potential decommissioning liability was less than or equal to 50 percent of its net worth<sup>5</sup>—did not have to provide supplemental financial assurance and was considered “waived.” Additionally, if one lessee on a lease was waived, no other co-lessee (regardless of its own financial strength) would be required to provide supplemental financial assurance to cover the decommissioning liability for the lease. In a situation involving multiple lessees and two or more co-lessees that qualified for a waiver,

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<sup>3</sup> The following are the five criteria: (i) Financial capacity substantially in excess of existing and anticipated lease and other obligations; (ii) Projected financial strength significantly in excess of existing and future lease obligations; (iii) Business stability based on five years of continuous operation and production of oil and gas or sulfur in the OCS or in the onshore oil and gas industry; (iv) Reliability in meeting obligations based on: (A) Credit rating; or (B) Trade references; and (v) Record of compliance with laws, regulations, and lease terms.

<sup>4</sup> The 2008 NTL mandated a minimum net worth of \$65 million and imposed a cap on the amount of waived liability at 50% of net worth. Liability covered by two qualified companies was not counted against the 50% cap.

<sup>5</sup> This is not a separate criterion but simply an elaboration of criterion one.

none of the co-lessees was required to provide financial assurance, and the decommissioning liability on the lease was not attributable to any lessee. Because companies in this situation would not have the decommissioning liability associated with their lease(s) attributed to them (*i.e.*, the decommissioning liability would not be attributed to any company), that liability would not have been considered in determining whether that company met the net worth requirements to obtain a waiver.

For a company in this situation, the financial capacity of the lessee would have appeared better than it actually was, because its total decommissioning liability appeared artificially low; the lessee could potentially qualify for a waiver to which it might not otherwise be entitled. Undergirding this rationale was an assumption that the chances of two waived lessees becoming financially distressed was unlikely. This proposed rule addresses that potential risk by allowing BOEM to obtain additional data to take contingent liabilities into consideration.

Since 2009, more than 30 corporate bankruptcies have occurred involving offshore oil and gas lessees with un-bonded decommissioning liabilities. The fact that bankruptcies and reorganizations have involved un-bonded decommissioning liabilities demonstrates that the waiver criteria in NTL No. 2008-N07 were inadequate to protect the public from potential responsibility for OCS decommissioning liabilities, especially during periods of low oil and gas prices. For example, ATP Oil & Gas was a mid-sized company with a supplemental financial assurance waiver when it filed for bankruptcy in 2012. Similarly, Bennu Oil & Gas, LLC, had a waiver at the time of its bankruptcy filing, and Energy XXI, Ltd., and Stone Energy Corporation obtained waivers within a year of filing for bankruptcy. While most OCS leases affected by the bankruptcies were ultimately sold or retained by the companies reorganized under chapter 11 of the U.S. Bankruptcy Code, these bankruptcies highlighted the weaknesses in BOEM's supplemental financial assurance program, including the waiver criteria in NTL No. 2008-N07, and BOEM's inability to forecast financial distress of these waived operators with sufficient time to require and receive financial assurance.

These bankruptcies involved a total offshore decommissioning liability of approximately \$7.5 billion. This figure includes properties with co-lessees and predecessor lessees and properties held by companies that successfully emerged from a chapter 11 reorganization. However, the actual financial risk to the United States is significantly less than the total offshore decommissioning liability associated with offshore corporate bankruptcies. This is in part because other private parties may be responsible for decommissioning costs. Co-lessees and predecessors retain pre-existing obligations to fund or perform decommissioning. Also, a bankrupt company's assets were often sold to financially stronger buyers who assumed those liabilities.

Additionally, if BOEM has insufficient supplemental financial assurance at the time of an operator's bankruptcy, BOEM may pursue legal avenues for obtaining performance or funds in bankruptcy proceedings, such as provisions for decommissioning in the terms of the reorganization, the sale of the leases to financially responsible buyers, or limitations on debtor attempts to abandon environmental problems. However, in pursuing legal avenues, favorable outcomes are not assured, and additional funds may not be obtained to cover decommissioning obligations. It is possible that when there are multiple co-lessees on a lease, only one of them meets the credit rating threshold. It is also possible that co-lessees are not required to provide additional financial assurance and predecessors lack sufficient capital to fulfill unexpected decommissioning obligations. In these scenarios, bankrupt assets may prove less valuable than anticipated and fail to generate new buyers at auction. Components and wells for which the bankrupt party is the only liable party on the lease may further complicate decommissioning efforts. These challenges create a risk of unplugged wells and orphaned infrastructure. The American taxpayer may pay the cost of plugging those wells and reclaiming that abandoned infrastructure. BSEE has identified orphaned infrastructure without a predecessor and no financial assurance to cover the cost of decommissioning. BSEE's fiscal year 2023 budget request included \$30 million in order to address this uncovered infrastructure.

On May 27, 2009, MMS issued a proposed rule, “Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf” (74 FR 25177), to rewrite the majority of 30 CFR part 256 (now redesignated as 30 CFR part 556).<sup>6</sup> However, BOEM (post MMS restructuring) deferred revision of the bonding regulations to a separate rulemaking. The separate rulemaking commenced August 19, 2014, with an advance notice of proposed rulemaking (ANPRM), “Risk Management, Financial Assurance and Loss Prevention” (79 FR 49027), to solicit ideas for improving the bonding regulations.

In December 2015, the Government Accountability Office (GAO) reviewed BOEM’s supplemental financial assurance procedures and issued a report titled “Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities.” (GAO Report). While acknowledging BOEM’s ongoing efforts to update its policies, the GAO Report recommended, inter alia, that “BOEM complete its plan to revise its supplemental financial assurance procedures, including the use of alternative measures of financial strength.”<sup>7</sup>

Following further analysis and a series of stakeholder meetings in 2015 and 2016 to solicit industry input, BOEM attempted to remedy the weaknesses in its supplemental financial assurance program with new NTL No. 2016-N01, “Requiring Additional Security,” which became effective September 12, 2016. NTL No. 2016-N01 sought to clarify the procedures and explain how BOEM would use the regulatory criteria to determine if and when supplemental financial assurance would be required for OCS leases and RUE and ROW grants. The NTL used net worth of a lessee as a measure of financial strength, detailed several changes in policy, and refined the criteria used to determine a lessee’s or grant holder’s financial ability to carry out its obligations. On August 29, 2016, BOEM requested GAO to close the above-stated recommendation in the GAO Report, stating that BOEM had implemented the recommendation

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<sup>6</sup> 76 FR 64432, Oct. 18, 2011.

<sup>7</sup> <https://www.gao.gov/products/gao-16-40>.

by issuance of the NTL. The GAO found that the recommendation had been implemented and closed the audit recommendation later in Fiscal Year 2016.

In December 2016, BOEM began implementing the NTL and issued numerous orders to lessees and grant holders to provide supplemental financial assurance for “sole liability properties,” *i.e.*, leases and RUE and ROW grants for which the lessee or grant holder was the only party liable for meeting the lease or grant obligations.

On January 6, 2017, BOEM issued a note to stakeholders extending the implementation timeline for NTL No. 2016-N01 for six months. The extension applied to leases and RUE and ROW grants for which there were co-lessees, predecessors in interest, or both, except where BOEM determined there was a substantial risk of nonperformance of the interest holder’s decommissioning obligations. The extension of the implementation timeline allowed BOEM to evaluate which leases and grants would be considered sole liability properties.

BOEM issued a second note to stakeholders on February 17, 2017, further extending the implementation timeline. BOEM also announced in the February note that it would withdraw the December 2016 orders issued on sole liability properties to allow time for the then new administration to review BOEM's supplemental financial assurance program.

In 2017, BOEM began to review its supplemental financial assurance program and NTL No. 2016-N01 to determine whether modifications were necessary and, if so, to what extent. BOEM’s objective was ensuring operator compliance with lease terms while minimizing unnecessary burden on industry. As a result of this review, BOEM recognized the need to further develop a comprehensive program to assist in identifying, prioritizing, and managing the risks associated with industry activities on the OCS. This included options for revising or rescinding NTL No. 2016-N01 and revising the financial assurance program through rulemaking.

### **C. 2020 Joint Notice of Proposed Rulemaking**

On October 16, 2020, BOEM and BSEE issued a joint notice of proposed rulemaking to revise certain BSEE policies concerning decommissioning orders and BOEM’s financial

assurance regulations. (See “Risk Management, Financial Assurance and Loss Prevention,” 85 FR 65904). As stated above, under existing regulations, BOEM requires lessees to provide a base bond as financial assurance to ensure that the cost of meeting OCS obligations is not passed to the taxpayer. The Regional Director may also order supplemental financial assurance if necessary to ensure performance of offshore decommissioning obligations.

In the joint proposed rule, BOEM proposed to adjust its supplemental financial assurance criteria to reflect the risk mitigation already provided by the joint and several liability of financially stable co-lessees and predecessor lessees. BSEE and BOEM regulations hold predecessors and current co-lessees responsible for decommissioning when a current lessee is unable to perform.<sup>8</sup> In the joint proposed rule, BOEM would have taken into account the financial stability of predecessor lessees by waiving supplemental financial assurance requirements for a current lessee when there was a financially strong predecessor lessee.

In the joint proposed rule, BOEM also sought to change its methodology for measuring financial strength to focus on a lessee’s or its predecessor’s credit rating and the value of proved oil and gas reserves. These proposed criteria would have relied on a company’s nationally recognized statistical rating organization (NRSRO) credit rating or an equivalent BOEM proxy credit rating determined by evaluating a company’s submitted audited financial statements through S&P Global’s Credit Analytics credit model or a similar, widely accepted credit rating model. Under the joint proposed rule, a credit rating less than or equal to either BB- from S&P Global’s Credit Analytics ratings (S&P), Ba3 from Moody’s Investor Service (Moody’s) or a proxy credit rating less than or equal to either BB- or Ba3, as determined by the Regional Director, could have constituted grounds for the Regional Director to require a lessee to provide supplemental financial assurance. If a company did not meet the minimum credit rating or proxy credit rating level, BOEM would have inquired into the credit or proxy credit ratings of co-lessees and predecessor lessees, which could be held liable under joint and several liability. If

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<sup>8</sup> See, for example, 30 CFR 556.604(d), 556.605(e), and 250.1701.

one of these co-lessees or predecessors met the credit rating criteria, BOEM could decide not to require supplemental financial assurance from the lessee. If there were no co-lessee or predecessor lessee that met the credit rating criteria, BOEM would then look to the value of the proved oil and gas reserves on the lease. If the value of those proved reserves was equal to or greater than three times the estimated cost of the decommissioning associated with the production of the reserves on any given lease, supplemental financial assurance would not have been required.

BOEM further proposed to use the same credit rating criteria to determine the financial assurance requirements for RUE grants described in § 550.160 and ROW grants in a revised § 550.1011. This would have included consideration of the credit and proxy credit ratings of co- and predecessor grant holders but would not have considered proved oil and gas reserves, given that neither RUE nor ROW grants entitle the holder to any interest in oil and gas reserves.

The joint proposed rule would have also applied the same credit rating criteria to its evaluation of potential guarantors. The joint proposed rule also would have removed the requirement for a third-party guarantee to ensure full compliance with the obligations of all lessees, operating rights owners, and operators on the lease and would have allowed a third-party guarantee to be used as supplemental financial assurance for a RUE or ROW grant. The former change would have allowed a guarantor to limit its guarantee to a subset of lease or grant obligations. Additional proposed changes would have applied to third-party guarantees the same terms and conditions that apply to cancellation of supplemental financial assurance surety bonds and return of pledged financial assurance, as well as a clarification to reiterate that “guarantee” and “indemnity agreement” both refer to the same guarantee agreement.

On January 20, 2021, President Biden signed Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” This Executive order, among other things, instructs agencies to review actions taken between January 20, 2017, and January 20, 2021, and consider publishing a notice of proposed rulemaking suspending,

revising, or rescinding that action. Upon conducting such a review of the 2020 proposal and the record postdating the review, BOEM has decided, as an exercise of its judgement and expertise, not to move forward with the joint proposed rule and acknowledges that NTL No. 2016-N01 was never fully implemented and has since been rescinded. This NPRM parallels the approach in BOEM's portion of the 2020 proposal but, to increase protection of the taxpayer, it would require a higher threshold credit rating and would not allow a current lessee to avoid posting additional assurance based on a predecessor lessee's strength.

#### **D. Purpose of BOEM's Proposed Rulemaking**

This proposed rule is intended to update BOEM's criteria for determining whether oil, gas, and sulfur lessees, RUE grant holders, and ROW grant holders may be required to provide supplemental financial assurance to ensure compliance with their OCS obligations. In its continued efforts to address concerns with the financial assurance program, BOEM has opted to issue this new notice of proposed rulemaking to better protect the taxpayer from bearing the cost of facility decommissioning and other financial risks associated with OCS development, such as oil spill cleanup or other environmental remediation. Although the cases where taxpayers have actually paid costs for decommissioning are rare, some BOEM lessees have entered bankruptcy without the resources to cover decommissioning. In these cases, BOEM is required to negotiate with predecessors, co-lessees, and bankruptcy courts to obtain the funds needed for decommissioning. As mentioned earlier, this process is not always sufficient, as reflected in BSEE's request for additional appropriations to cover decommissioning of facilities for which there is no remaining liable party. BOEM has decided not to set a lower supplemental financial assurance requirement for lessees with financially strong predecessor lessees. Instead, BOEM proposes to require supplemental financial assurance for all leases owned by lessees that do not meet the proposed financial strength threshold or have sufficiently valuable proved oil and gas reserves on their leases that may attract a buyer if the current lessees are in financial distress. The omission of predecessor lessees from this calculus addresses several financial assurance issues. It

ensures the current lessees have the financial capability to fulfill its decommissioning obligations, and discourages lessees from ignoring end-of-life decommissioning costs. It also simplifies potential administrative demands, since it obviates the need for parties to distinguish between wells with predecessor lessees and more recent sole-liability wells, side-track wells, and other sole-liability components. This proposed rule would retain the authority to pursue predecessor lessees for the performance of decommissioning; however, this proposed rule would not allow BOEM to rely upon the financial strength of predecessor lessees when determining whether, or how much, supplemental financial assurance should be provided by current OCS leaseholders.

Under this proposed rule, instead of relying primarily on net worth to determine whether a lessee must provide supplemental financial assurance, BOEM's primary consideration would be a lessee's credit rating. Credit rating agencies account for many factors when evaluating a company, including cash flow, debt-to-earnings ratios, debt-to-funds-from-operations ratios, and other financial factors. A credit rating considers the past performance of a company, including, but not limited to, the income statement and cash flow statement, which provide a broad picture of how well a company may be able to meet its liabilities. The rating also considers forward-looking factors, such as the anticipated loss of assets and the anticipated highs and lows of the company's business cycle. Credit ratings provide a measure of the probability of a default on an obligation; studies have shown a very close correlation between the rating level and the probability of default<sup>9</sup>.

On the other hand, a net worth analysis (typically total assets minus total liabilities) uses figures that reflect the last day of the fiscal period. This "snapshot" is not adequate to predict a lessee's future financial position because a lessee's financial deterioration can occur quickly due to volatility in oil and gas prices, improper hedging of risks, and other business and economic

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<sup>9</sup> See for example, "Ratings vs Default Rates", Moody's Annual Default Study – February 8, 2022, Douglas J. Lucas, "Default Correlation and Credit Analysis", The Journal of Fixed Income Mar 1995, 4 (4) 76-87; DOI: 10.3905/jfi.1995.408124.

reasons. Net worth is one financial data point that may not accurately reflect the overall financial risk posed by the company, as compared to the more comprehensive financial review undertaken by the rating agencies. A singular financial ratio analysis may unintentionally penalize some corporate structures where that particular ratio is not as important or relevant to that business, for example midstream master limited partnerships, which the tax code requires to distribute 90% of net income to partners. Relying on the more comprehensive and forward-looking credit rating analysis — both to determine whether supplemental financial assurance may be necessary and to determine whether a company can be a guarantor of the financial obligations of other companies operating on the OCS—would better allow BOEM to demand security before a company becomes financially distressed. For more discussion on credit ratings, see section VI.A (BOEM Evaluation Methodology – Credit Ratings) of this preamble.

After accruing an obligation to decommission certain infrastructure (*e.g.*, well, platform, pipeline), the predecessor lessee remains jointly and severally liable for decommissioning that infrastructure, even in cases where a predecessor lessee has divested its full interest in a lease by assignment to another company. This rulemaking would retain BOEM’s existing right to pursue predecessor lessees for the performance of decommissioning; however, this rulemaking would not allow BOEM to rely upon the financial strength of predecessor lessees when determining whether, or how much, supplemental financial assurance should be provided by current OCS leaseholders. This change strengthens the financial assurance program by ensuring current lessees have the financial strength or supplemental financial assurance in order to fulfill all their obligations.

In summary, BOEM is proposing this rulemaking to clarify and simplify its financial assurance requirements and to provide greater protection to taxpayers. These proposed regulatory changes provide additional clarity that current grant holders, lessees, and, when appropriate, operating rights holders (sublessees) bear the cost of ensuring compliance with lease obligations, rather than relying on prior owners.

#### **IV. Proposed Revisions to BOEM Supplemental Financial Assurance Requirements**

BOEM's existing financial assurance regulatory framework has two main components: 1) Base bonds, generally required in amounts prescribed by regulation, and 2) Supplemental financial assurance, above the prescribed base bond amounts, that may be required upon the Regional Director's determination that an increased amount is necessary to ensure compliance with OCS obligations. BOEM's objective is to ensure that taxpayers do not bear the cost of meeting the obligations of lessees and grant holders on the OCS, particularly the costs of decommissioning that must be met after the cash flow from production ceases. At the same time, BOEM also recognizes the costs and disincentives to additional exploration, development, and production that are imposed on lessees and grant holders by increasing the required amounts of bonds and/or other financial assurance. After taking these considerations into account, BOEM is proposing to: 1) Modify the evaluation process for requiring supplemental financial assurance by clarifying and streamlining the evaluation criteria; and, 2) Remove restrictive provisions for third-party guarantees and decommissioning accounts. This proposed rule would allow the Regional Director to require supplemental financial assurance when a lessee or grant holder poses a substantial risk of becoming financially unable to carry out its obligations under its lease or grant, or when the property may not have sufficient value to be sold to another company that could assume those obligations. In the former case, the risk that the taxpayer might have to take on the financial obligations of a lessee or grant holder is mitigated when there is a co-lessee or co-grant holder that has sufficient financial capacity to carry out the obligations.

##### **A. Leases**

Lessees are jointly and severally liable for the lease decommissioning obligations that accrue during their ownership, as well as those that accrued prior to their ownership, which means that each current co-lessee is liable for the full obligation and BSEE may pursue performance from any individual current lessee. *See, e.g.,* 30 CFR 556.604(d). In addition, a lessee that transfers its interest to another party continues to be liable for any unperformed

decommissioning obligations that accrued prior to, or during, the time that lessee owned an interest in the lease. *See, e.g.*, 30 CFR 556.710. This transferor liability applies, however, only to those obligations existing at the time of transfer; new facilities, or additions to existing facilities, that were not in existence at the time of any lease transfer are not obligations of a predecessor company and are considered obligations of the party that built such new facilities and its co- and successor lessees.

BOEM's existing supplemental financial assurance evaluation process, contained in § 556.901(d), is based only on the current lessee's ability to carry out present and future obligations. BOEM proposes to codify that this evaluation process includes an evaluation of the ability of a co-lessee to carry out present and future obligations. This codification recognizes that all of the current owners are benefiting from ongoing operations and are jointly and severally liable for compliance with DOI requirements. A current co-lessee is equally liable for present obligations and future obligations that exist while it is a co-lessee, including nonmonetary obligations.

Under BOEM's existing regulations, the Regional Director's evaluation of the need for supplemental financial assurance is based on the following five criteria: financial capacity; projected financial strength; business stability; reliability in meeting obligations based upon credit rating or trade references; and record of compliance with laws, regulations, and lease terms. BOEM is proposing to streamline its evaluation process by using only two criteria to determine whether supplemental financial assurance on a lease may be required: (1) A credit rating, either from an NRSRO, as identified by the United States Securities and Exchange Commission (SEC) pursuant to its grant of authority under the Credit Rating Agency Reform Act of 2006 and its implementing regulations at 17 CFR parts 240 and 249, or a proxy credit rating determined by BOEM based on a company's audited financial statements;<sup>10</sup> or (2) The 3-to-1

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<sup>10</sup> In order for BOEM to establish a proxy credit rating, which can be used for the purpose of waiving any supplemental financial assurance requirements that would otherwise be required, BOEM is requiring that any company seeking a proxy credit rating provide audited financial statements. If such statements are not provided,

ratio of the value of proved oil and gas reserves on a lease to the decommissioning liability associated with these reserves. These criteria better align BOEM’s evaluation process with accepted financial risk evaluation methods used by the banking and finance industry. Corporate credit ratings are intended to evaluate the potential for a company to default on its financial obligations and are designed so that the higher the credit rating, the lower the risk of default. Credit ratings and proved oil reserves are good indicators of the likelihood that a company will be able to meet its financial obligations. Eliminating subjective or less precise criteria— such as the length of time in operation to determine business stability, or trade references to determine reliability in meeting obligations— will simplify the process and remove criteria that may not accurately or consistently predict financial distress. For more discussion on credit ratings, see section VI.A (BOEM Evaluation Methodology – Credit Ratings) of this preamble.

BOEM proposes to eliminate the “business stability” criterion found in the current version of § 556.901(d)(1)(iii). The existing regulation bases business stability on 5 years of continuous operation and production of oil and gas, but BOEM has determined that there is little correlation between such history and a company’s ability to carry out its present and future obligations. BOEM conducted an analysis of offshore bankruptcies, including an assessment of the number of years incorporated prior to bankruptcy, and determined that whether a company was in business for 5 or more years had no relationship to the likelihood of bankruptcy.

BOEM also proposes to eliminate the existing “record of compliance” criterion found in the current version of § 556.901(d)(1)(v). BOEM has determined that the number of INCs a company receives correlates with the number of OCS properties it owns, not its financial stability, and therefore, BOEM has concluded that it is not an accurate predictor of its financial health. BOEM reviewed BSEE’s Incidents of Non-Compliance (INCs) records and its Increased Oversight List, which represent BSEE’s cumulative records of violations of performance

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BOEM will require supplemental financial assurance because it will have insufficient basis for concluding that the owners have sufficient capacity to reliably and timely meet their lease obligations.

standards on the part of OCS operators and lessees and determined that the number of incidents of non-compliance typically increases with the size and complexity of the operator's or lessee's operations, including the ratio of incidents to number of components. Because larger companies (regardless of credit score) tend to have more properties and components and therefore more INCs, BOEM determined that record of compliance criterion does not accurately predict financial default. BOEM's review of this information confirmed the feedback BOEM received in response to the 2016 NTL, namely that companies with a large number of properties and facilities tended to receive a large number of INCs and had more individual properties on the Increased Oversight List.<sup>11</sup> BOEM specifically requests comments regarding the use of fines and violations as a criterion in the determination of a company's ability to fulfill decommissioning obligations, and any data or analysis addressing any correlation between the number of violations and the risk of financial default. BOEM also requests comments on whether the elimination of the INC's criteria would create a disincentive to comply with regulations. BOEM also requests comment on whether or not the cost of decommissioning is likely to increase based on the type, quantity, and magnitude of previous violations.

BOEM proposes to replace the existing "financial capacity" and "reliability" criteria in existing § 556.901(d)(1) with issuer credit rating or proxy credit rating. BOEM has found credit ratings, which are part of the existing "reliability" criterion, to be a more reliable indicator of financial ability to meet obligations than previous financial criteria issued by BOEM via NTLs (ex. NTL 2008-N07, NTL 2016-N01). Issuer credit ratings provided by a NRSRO incorporate a broad range of qualitative and quantitative factors, and a business entity's credit rating most accurately represents its overall ability to meet its financial commitments. An issuer credit rating is a forward-looking opinion about an obligor's overall creditworthiness. This opinion focuses on the obligor's capacity and willingness to meet its financial commitments as they come due.

Under the proposal, if a lessee does not have a credit rating from a NRSRO, the lessee

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<sup>11</sup> The most recent data are available at <https://www.data.bsee.gov/Company/INC/Default.aspx>.

may instead submit audited financial statements, and BOEM will determine a proxy credit rating using a commercially available credit model determined by BOEM to fulfill its financial risk analysis requirements, such as the S&P Global's Credit Analytics credit model. Such audited financial information is currently the basis of one of the five criteria in BOEM's regulations, namely the "financial capacity" criterion. Under the proposed rule, this information will be the primary consideration used to evaluate lessees that do not have a NRSRO credit rating. BOEM has concluded that audited financial statements, prepared in accordance with Generally Accepted Accounting Principles (GAAP) and accompanied by an auditor's certificate, provide an accurate representation of the company's economic position and operational performance. Using this audited financial information to generate a proxy credit rating would allow BOEM to accurately determine if supplemental financial assurance is needed when a NRSRO rating is not available.

This proposed rule would provide the Regional Director with the authority to require a lessee to provide supplemental financial assurance if the lessee or its co-lessee does not have an investment grade credit rating, *i.e.*, a credit rating from a NRSRO that is greater than or equal to either BBB- from S&P or Baa3 from Moody's, or its equivalent, or a proxy credit rating greater than or equal to either BBB- or Baa3, as determined by the Regional Director, based on audited financial information with an accompanying auditor's certificate. BOEM has determined that having an investment grade credit rating is important to reliably ensure that a company not pose a substantial risk of default.

Under existing BOEM and BSEE regulations that would not change in this proposed rule, co-lessees are jointly and severally liable for accrued decommissioning obligations, and the risk that the government will be responsible for the decommissioning cost is therefore lower when co-lessees are financially viable. Hence, BOEM will not require supplemental financial assurance for properties where at least one co-lessee has an investment grade credit rating

If BOEM determines that supplemental financial assurance is required, BOEM bases the amount of supplemental financial assurance required on the BSEE decommissioning cost

estimate. Previously, BSEE provided a single algorithm-based deterministic estimate for OCS facilities. In 2020, BSEE updated certain decommissioning costs in the Technical Information Management System (data.boem.gov).<sup>12</sup> The new estimates were based on industry-reported decommissioning costs pursuant to NTL 2016-N03 - Reporting Requirements for Decommissioning Expenditures on the OCS, later superseded by NTL 2017-N02. Based on the reported data, BSEE has developed three probabilistic estimates of decommissioning costs for each OCS facility on any given lease. The lowest cost estimate would have a fifty percent likelihood of covering the full cost of decommissioning a facility and is thus referred to as “P50.” The second lowest cost estimate, P70, would have a seventy percent likelihood of covering the full cost of decommissioning a facility. The third and highest cost estimate, P90, would have a ninety percent likelihood of covering the full decommissioning cost of a facility. These BSEE-generated estimates are based on actual decommissioning expenditures reported by offshore companies.

BOEM proposes to use the P70 value to set the amount of any required supplemental financial assurance. In determining to use the P70 value, BOEM considered using either the P50, P70, or P90 decommissioning liability levels, which respectively represent an approximately 11 percent (\$3.5 billion), 30 percent (\$9.6 billion), and 55 percent (\$17.9 billion) increase in total estimated financial assurances available to address offshore decommissioning liability relative to the previous algorithm-based estimate, based on an analysis of industry-reported decommissioning costs. BOEM weighed the risk of being underfunded (greatest at the P50 level) against the financial impact of requiring more financial assurance (greatest at the P90 level). As an example, a supplemental financial assurance set based on the P70 value means that, based on the uncertainty and risk applied by BSEE to its model, there is a 70% probability of covering the decommissioning cost of the facility (and therefore a 30% probability of exceeding it). The P70

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<sup>12</sup> BSEE decommissioning cost estimates are available at the following URL: <https://www.data.bsee.gov/Leasing/DecomCostEst/Default.aspx>.

value is not to be confused with the figure representing 70% of the cost of decommissioning a particular facility. Because it is a statistical concept, it relies on the quality and size of the sample, as well as the uncertainty (variance) existing in these costs. There is also a real possibility that the P70 figure exceeds the actual decommissioning value of many facilities, in which case excess would cover some portion of insufficient assurance in those cases where the assurance is designed to address that entity's full range of liabilities.

BOEM's goal for its financial assurance program continues to be the protection of the American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage. BOEM's proposal to use P70 would reduce offshore decommissioning risk to taxpayers relative both to previous BSEE decommissioning estimates and to a methodology based on P50, while reducing burden on available capital for offshore investment, including both conventional and renewable energy activities, imposed by the use of P90. BOEM requests comments on potential unknown risks associated with the use of P70. BOEM has examined the impact that the different P values would have on the amount of financial assurance required but lacks the data to estimate the impact that selecting a P90 value might have on offshore capital expenses and investments, and therefore has selected P70 in this proposal. We are also specifically seeking information and data related to these impacts from commenters.

For comparison, at BSEE's P90 levels, the total decommissioning liability is approximately \$51.2 billion, compared with \$42.8 billion at P70; of that total, the liability estimate associated with lessees who have sub-investment grade credit ratings is approximately \$24.7 billion at the P90 level and \$20.2 billion at the P70 level. The total liability estimates for properties expected to meet the three times reserves threshold is approximately \$9.0 billion at the P90 level and \$7.8 billion at P70 level. The difference between the full Tier 2 estimate and that of Tier 2 properties meeting the three times the reserves threshold provides BOEM's total

expected bond portfolio value if the rule were to be finalized. For P90 this would be \$15.7 billion, reflecting an increase of \$3.2 billion in bond demands (increased from \$12.5 billion at P70). The annual premium estimate for the forecasted Tier 2 bond portfolio would increase from \$380 million to \$494 million, an increase of approximately \$114 million to bond lessees at the P90 level. This additional burden would be realized by the same population of lessees as at the P70 level but would provide additional certainty of sufficient bonding for that population in the event the facility owners (1) defaulted on their obligations and (2) no viable predecessor is available to fulfill their obligations.

BOEM requests comments and additional data on the costs and benefits of setting the supplemental financial assurance requirements based on each of the P50, P70, and P90 decommissioning liability levels. In particular, BOEM would like information on impacts to offshore capital expenses and investments of each liability level, as well as impacts to potential taxpayer liability. BOEM also solicits comment on whether setting assurance requirements based on different liability levels might be appropriate for different circumstances. BOEM also requests comments on costs and benefits of otherwise considering predecessor lessees or grantees in determining the level of required supplemental financial assurance.

Additionally, BOEM requests comments on the possibility of using a higher BSEE decommissioning estimate (*i.e.*, P90), including on how a P90 estimate would affect small entities.

An offshore oil and gas lease that has a significant reserve-to-liability value that is, a property that can generate a cash flow significantly in excess of the costs associated with the decommissioning of its assets— is likely to be purchased by another company in the event of a default by the current lessee. The acquiring company would then become liable for existing decommissioning obligations, but due to the value of existing reserves, it would acquire sufficient positive cash flow to reduce the risk that the costs associated with the decommissioning of the assets would be borne by the government. BOEM has determined that

an adequate threshold for the ratio of reserve value to the level of decommissioning liability should be three to one. This threshold is discussed further in Section VI.B of this preamble. Therefore, supplemental financial assurance will not be required for properties with a value of proved oil and gas reserves (using SEC methodology of reported value in the notes to the publicly traded companies' Form 10-Ks) exceeding three times the decommissioning costs (using the BSEE P70 estimated value) associated with the production of those reserves, as these properties pose minimal risk that the government will be required to bear the cost of decommissioning.

BOEM is proposing to use and is requesting comments on this test as the criterion to replace the existing generalized "projected financial strength" criterion found currently at § 556.901(d)(1)(ii), which considers whether the estimated value of a lessee's existing lease production and proved reserves is significantly in excess of the lessee's existing and future lease obligations.

### **B. Right-of-Use and Easement Grants**

BOEM's regulations concerning RUE grants serving a Federal OCS lease or a State lease are found in §§ 550.160 through 550.166. Section 550.160 provides that an applicant for a RUE that serves an OCS lease "must meet bonding requirements," but the regulation does not prescribe a base surety bond amount. The proposed rule would replace this requirement with a cross-reference to the specific criteria governing supplemental financial assurance demands in proposed § 550.166.

BOEM is proposing to revise the bonding regulations to clarify that any RUE grant holder must provide base financial assurance in a specific amount, regardless of whether the RUE serves a State lease or a Federal OCS lease. BOEM is proposing to establish a Federal RUE base financial assurance requirement that matches the existing \$500,000 base financial assurance requirement for State RUEs. BOEM is also proposing to establish a requirement for \$500,000 area-wide RUE financial assurance, which would satisfy the base financial assurance

requirement for any RUE holder that owns one or more RUEs within the same OCS area, regardless of whether the RUE serves a State or Federal lease. BOEM is also proposing to allow any lessee that has posted area-wide lease financial assurance, pursuant to § 556.900(a)(1), 556.901(a)(2), or 556.901(b)(2) for the areas specified in § 556.900(a)(2), to modify that lease surety bond to also cover any RUE(s) in the area owned by the same lessee. The ability to use area-wide lease financial assurance to cover the RUE base financial assurance obligation would be subject to the requirement that the area-wide lease financial assurance would be in an amount equal to or greater than the RUE base financial assurance requirement (*i.e.*, equal to or greater than \$500,000). For example, under the proposed regulations a lessee with a \$3 million area-wide lease surety bond could establish or acquire any number of Federal or State RUEs in the area without having to post any additional financial assurance, provided the lessee agrees to modify the terms of its area-wide lease surety bond to also cover any State or Federal RUEs that it owns or acquires. If the existing area-wide bond is not modified, the lessee may satisfy the requirement by providing new financial assurance to cover its RUE(s).

The rule proposes to consider the credit rating or proxy credit rating of a RUE co-grant holder, mirroring the proposed methodology used to determine if a lessee must provide supplemental financial assurance. These credit rating standards provide the most effective and proven method to evaluate a company's financial wherewithal and are widely accepted as a significant demarcation of credit risk between investment and non-investment grade rated companies. BOEM proposes to include consideration of the credit rating or proxy credit rating of co-owners of RUE grants because, like co-lessees, they are jointly and severally liable for accrued decommissioning obligations for facilities and pipelines on their RUE.

These changes to the RUE financial assurance requirements are intended to: 1) Clarify the bonding requirement for Federal RUEs, which is not explicitly defined in the existing regulations; 2) Align the RUE bonding requirements for RUEs serving State and Federal leases; and 3) Ensure that all RUEs are duly covered and that the risk of a RUE holder defaulting on its

decommissioning obligations is not transferred to the American taxpayer.

BOEM is also proposing a new regulation to establish the conditions under which the assignment of RUE interests may be disapproved. BOEM may disapprove the assignment of a RUE when the assignee has not satisfied all obligations under the regulations or under any BOEM or BSEE order. BOEM may disapprove the assignment when the assignee has not satisfied the financial assurance requirements.

BOEM is also proposing to revise the financial assurance regulations to clarify that any RUE grant holder, whether the RUE serves a State or Federal lease, may be required to provide supplemental financial assurance for the RUE – above the \$500,000 RUE base financial assurance discussed above – if the grant holder does not meet the credit rating or proxy credit rating criteria proposed to be used for lessees. This change aligns the supplemental financial assurance criteria for RUEs with those used in making the same determination for leases. The value of proved oil and gas reserves will not be considered because a RUE grant does not entitle the holder to any interest in oil and gas reserves.

### **C. Pipeline Right-of-Way Grants**

BOEM's bonding requirements for pipeline ROW grants, contained in § 550.1011, prescribe a \$300,000 area-wide base surety bond that guarantees compliance with all the terms and conditions of the pipeline ROW grants held by a company in an OCS area. BOEM may require a pipeline ROW grant holder to provide supplemental financial assurance if the Regional Director determines that financial assurance in excess of \$300,000 is needed, but, unlike with leases, the regulation provides no factors for the Regional Director's consideration when making this determination. Therefore, BOEM is proposing to revise the financial assurance regulations to provide that the Regional Director will demand that a pipeline ROW grant holder provide supplemental financial assurance when the grant holder does not meet the same credit rating or proxy credit rating criteria proposed to be used for lessees. The value of proved oil and gas reserves will not be considered because a ROW grant does not entitle the holder to any interest in

oil and gas reserves.

The rule also proposes to consider the credit rating or proxy credit rating of a co-grant holder. This change would better align BOEM's evaluation process with accepted financial risk evaluation methods used by the banking and finance industry and with the process used to determine if a lessee must provide supplemental financial assurance. BOEM proposes to include consideration of the credit rating or proxy credit rating of co-owners of ROW grants because, like co-lessees, they are jointly and severally liable for accrued decommissioning obligations for facilities and pipelines on their ROW (§ 250.1701(b)).

## **V. Proposed Revisions to Other Types of Supplemental Financial Assurance**

### **A. Third-Party Guarantees**

BOEM is proposing to evaluate a potential guarantor using the same credit rating or proxy credit rating criteria proposed for lessees. The value of proved oil and gas reserves of an associated lease would not be considered because that value is a characteristic of the lease belonging to the guaranteed lessee and not an asset belonging to the guarantor.

The criteria to evaluate a guarantor provided in the existing regulations have proved difficult to apply. For example, § 556.905(a)(3) provides that the guarantor's total outstanding and proposed guarantees may not exceed 25 percent of its unencumbered net worth in the United States. Determining a company's total outstanding and proposed guarantees depends on accurate information provided by the guarantor, and BOEM has no way to confirm whether the 25 percent threshold has been exceeded at the time the guarantee is proffered or afterward. The same provision requires BOEM to consider the unencumbered net worth of the company in the United States, while another provision, § 556.905(c)(2)(iv), requires BOEM to consider the guarantor's unencumbered fixed assets in the United States. Both of these criteria are difficult to apply when the company under evaluation has domestic and international assets that must be separated. Using the same financial evaluation criterion, *i.e.*, issuer credit rating or proxy credit rating, to assess both guarantors and lessees as the most relevant measure of future capacity would provide

consistency in evaluations and avoid overreliance on net worth.

To allow more flexibility in the use of third-party guarantees, the proposed rule would allow a third-party guarantee to be used as supplemental financial assurance for a RUE or ROW grant, as well as a lease. Most significantly, in proposed § 556.902(a)(3), this proposed rule would remove the requirement for a third-party guarantee to ensure compliance with the obligations of all lessees, operating rights owners, and operators on the lease, and would allow a guarantee limited to a specific amount, as agreed to by BOEM, or limited to the liabilities of specific parties. Potential guarantors are reluctant to provide a guarantee if they cannot limit the amount of their guarantee or choose the entity for which they are guaranteeing compliance. This change would allow a guarantor to limit its guarantee to a specific amount of the total financial assurance requirement. The remaining amount of required financial assurance must be covered by additional security from the guaranteed lessee/grant holder or its co-lessees or co-grant holders, so the amount of the requirement is fully satisfied. BOEM is proposing this change because the existing regulations do not clearly limit the liability of a guarantor to a fixed monetary amount stated in the guarantee. Therefore, few parties were willing to use third-party guarantees in the past.

By allowing a third-party guarantor to guarantee only the obligations it wishes to cover, BOEM would provide industry with the flexibility to use the guarantee to satisfy supplemental financial assurance requirements without forcing the guarantor to cover the risks associated with all parties on the lease or grant or operations in which the party they wish to guarantee has no interest and over which the guarantor may have no control. Moreover, the proposal to allow BOEM to accept a third-party guarantee that is limited to specific obligations does not reduce BOEM's protection because the regulations would require that the financial assurance provided secures all lease and grant obligations.

The proposed rule would also allow BOEM to cancel a third-party guarantee under the same terms and conditions that apply to cancellation of other types of financial assurance, as

provided in proposed § 556.906(d)(2).

Lastly, the existing regulation refers to both a “guarantee” and an “indemnity agreement” (which BOEM intended to mean the same thing), and the proposed rule clarifies that the regulations contemplate only one agreement: the guarantee agreement.

### **B. Decommissioning Accounts**

Section 556.904 currently allows lessees to establish a lease-specific abandonment account to satisfy any supplemental financial assurance required by § 556.901(d). BOEM proposes to rename these accounts “Decommissioning Accounts,” the terminology used by the industry, to remove any perceived limitation of this type of account to a single lease, and to signify that these accounts may be used to ensure compliance with supplemental financial assurance requirements for a RUE and ROW grant, as well as a lease. To make these accounts more attractive to parties who may desire to use this method of providing supplemental financial assurance, BOEM also proposes to remove the requirement to pledge Treasury securities to fund the account before the funds equal the maximum amount insurable by the Federal Deposit Insurance Corporation (FDIC) (currently capped at \$250,000). BOEM notes that, due to this current requirement, lessees may have been unwilling to use decommissioning accounts.

### **C. Transfers of Lease Interests to Other Lessees or Operating Rights Holders**

The proposed rule would update subparts G and H of the Department’s existing part 556 regulations to clarify that BOEM will not approve the transfer of a lease interest, whether a record title interest or an operating rights interest, until the transferee complies with all applicable regulations and orders, including the financial assurance requirements. As discussed above, many of the facilities currently on the OCS have decommissioning obligations where the cost of performance greatly exceeds the amount of financial assurance currently available to the Department of the Interior. To address this problem, BOEM is proposing that it may prohibit approval of any new transfer or assignment of any lease interest unless and until the financial assurance demands have been satisfied.

## **VI. BOEM Evaluation Methodology**

### **A. Credit Ratings**

In this rulemaking, BOEM proposes to use an “Issuer credit rating” to evaluate the financial health of OCS lessees, grant holders, and guarantors. A review of S&P and Moody’s rating methodologies showed that the analyses they perform to determine an issuer credit rating are wide-ranging and include factors beyond corporate financials (such as history, senior management, and commodity price outlook). An issuer credit rating provides the rating agencies’ opinions of the entity’s ability to honor senior unsecured debt and debt-like obligations. It is common for lessees to have both an issuer credit rating and a bond issuance rating. However, bond issuance ratings are opinions of the credit quality of a specific debt obligation only, which can vary based on the priority of a creditor’s claim in bankruptcy or the extent to which assets are pledged as collateral. Due to the varying priority of claims associated with debt and the limited purpose of bond issuance ratings, BOEM proposes to accept only issuer credit ratings from a NRSRO, and references to credit rating in this rulemaking refer only to an issuer credit rating (or a “proxy rating” where so noted as appropriate). BOEM proposes to add “Issuer credit rating,” as defined by S&P, as a newly defined term in 30 CFR parts 550 and 556.

If an entity does not have an issuer credit rating, BOEM proposes to permit companies to request the Regional Director to determine a proxy credit rating based on audited financial information for the most recent fiscal year, including an income statement, a balance sheet, a statement of cash flows, and the auditor’s certificate. By “most recent fiscal year” BOEM means a period that includes a 12-month period within the 24 months prior to the Regional Director’s determination for which supplemental financial assurance is required. One benefit of this approach is to reduce the adverse effects of the rule on small businesses.

BOEM proposes to use S&P Global’s Credit Analytics credit model to calculate proxy

credit ratings.<sup>13</sup> However, BOEM proposes to reserve the right to use a different model if it determines that a different model more accurately reflects those factors relevant to the financial evaluation of companies operating on the OCS. The purpose of using S&P Global's Credit Analytics credit models is to provide an accurate and objective method to assess any given company's probability of default on its financial obligations based on its audited financial statements. S&P Global's Credit Analytics credit models would allow BOEM to reliably score and efficiently model BOEM's potential risk exposure from a lessee that could potentially become unable to meet its decommissioning obligations. Credit modeling would allow BOEM to compare the company with similar public companies in the same industry segment. BOEM invites comments on the appropriateness of relying on S&P Global's Credit Analytics credit model, or other similar, widely accepted credit rating models to generate proxy credit ratings. Additionally, BOEM invites comments on the appropriateness of using a proxy credit rating when determining the need to provide financial assurance.

BOEM's financial assurance program is intended to ensure that private companies have the capacity to meet their financial and non-financial (*i.e.*, performance) obligations. In order to both ensure that companies do not "cause [unmitigated] damage to the environment or to property, or endanger life or health," 43 U.S.C. 1332(6), and to promote "expeditious and orderly development," 43 U.S.C. 1332(3), BOEM seeks to balance the financial risk to the government and the taxpayer while minimizing regulatory burdens. See also 43 USC 1801(7), 1802(1) & (2).

BOEM has determined that establishing an issuer credit rating threshold of BBB- (S&P) or Baa3 (Moody's), an equivalent credit rating provided by another SEC-recognized NRSRO, or an equivalent proxy credit rating, is the best means for accomplishing these objectives. The Moody's Baa3 credit rating is equivalent to the S&P BBB- credit rating. If S&P and Moody's provide different ratings for the same company, BOEM will use the higher rating as the lessee's

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<sup>13</sup> [https://www.spglobal.com/marketintelligence/en/documents/mi\\_risk\\_609827\\_credit-analytics\\_brochure\\_letter\\_fd.pdf](https://www.spglobal.com/marketintelligence/en/documents/mi_risk_609827_credit-analytics_brochure_letter_fd.pdf).

rating. As discussed in the IRIA, out of the 276 companies analyzed, none of the companies were rated at or above BBB- at the time of bankruptcy nor within 10 years prior to bankruptcy, therefore, BOEM has selected BBB- as the credit rating threshold for providing additional financial assurance. Additionally, under the proposed rule, BOEM would have adequate time to secure needed financial assurance if a company were to drop below the proposed investment grade threshold as BOEM monitors company rating changes throughout the year.

BOEM reviewed historical default rates across the entire credit rating spectrum, as well as the credit profile of oil and gas sector bankruptcies arising from the commodity price downturn in 2014, to determine an appropriate level of risk. As would be expected, the average S&P historical one-year default rates increase significantly with lower ratings. The average S&P one-year default rate<sup>14</sup> for BBB- rated companies from 1981 to 2020 was 0.24 percent. Comparatively, the average one-year default rate for BB- rated companies was 1.21 percent, for B- rated companies was 8.73 percent, and for C rated companies was 24.92 percent. BOEM believes that one-year default rates are an appropriate measure of risk, given BOEM's policy of reviewing the financial status of lessees, ROW holders, and RUE holders at least on an annual basis (the review typically corresponding with the release of audited annual financial statements). In addition, throughout the year, BOEM monitors company credit rating changes, market reports, trade press, articles in major news media and quarterly financial reports to review the financial status of lessees, ROW holders, and RUE holders, and the regulation would not preclude a demand for supplemental financial assurance through the Regional Director's regulatory authority at any time.

BOEM has identified a circumstance in which the use of a proxy credit rating may not adequately account for the potential risk of default. This circumstance would occur in a situation

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<sup>14</sup> The one-year default rate represents the percentage of companies having any given credit rating that have failed to meet their financial obligations during any given twelve-month period. For example, for companies having had BBB- rating in 2020, 0.24 percent defaulted on their financial obligations in the subsequent twelve-month period (*i.e.* approximately one out of every 400 companies having a BBB- credit rating).

where a company has a substantial contingent liability for decommissioning OCS facilities (*i.e.*, decommissioning exposure by virtue of being a co-lessee) associated with its minority ownership of such facilities if the majority owners are unable or unwilling to meet their obligations. This is particularly the case in the OCS context because existing Department regulations stipulate that all co-owners of any OCS lease, regardless of their ownership share, are jointly and severally liable for all the obligations associated with the lease. Contingent liabilities that are deemed unlikely to financially materialize are not required to be booked as a liability on a balance sheet under Financial Accounting Standards Board (FASB) accounting rules for Asset Retirement Obligations, so would not be included in audited financial statements, and therefore may not be taken into consideration in the generation of proxy credit ratings.

For offshore lessees with a NRSRO issuer credit rating, the current average net worth of investment grade lessees is \$115 billion dollars, with average book assets of \$155 billion dollars. This implies that the financial risk of non-performance on co-lessee liability exposure from these companies is very low. Given that total U.S. offshore liability is lower than half the average net worth of offshore investment grade companies, such lessees are likely to have the financial capacity to cover the contingent liabilities of co-lessees that have not themselves provided financial assurance.

However, where a non-publicly traded company (*i.e.*, a company without an issuer credit rating) has substantial minority co-ownership interests in OCS leases, the proxy credit rating derived for the minority owner may not adequately represent the risk exposure in circumstances where (1) The ownership interests of the other co-owners are disproportionately large compared to the ownership interest of the minority owner, and; (2) The credit ratings of the majority co-owners are not investment grade. This possibility is relatively likely due to BOEM's historical practice of declining to require supplemental financial assurance from any co-lessees who share ownership of a lease with any company with an investment grade proxy credit rating, regardless of the financial circumstance of the co-owner or the relative ownership share of any co-owner.

In these circumstances, a company may have contingent decommissioning liabilities that are not adequately captured in the company's financial statements. It may be that such decommissioning liabilities amount to a disproportionate share compared to the total assets of the company, such that the company may not have the financial capacity to satisfy these contingent liabilities. If, for example, a small company with a high proxy credit rating were a one percent co-lessee of a lease with financially weak co-lessees, the small company may not have sufficient assets to meet its decommissioning obligations for the remaining ninety-nine percent of the decommissioning costs (which it may be required to satisfy under the joint-and-several liability provisions of the regulations) in the event that its co-lessees were to default on their financial obligations.

For this reason, BOEM is proposing to add a new provision to the regulations that would authorize BOEM to require a company requesting a proxy credit rating to provide information on its ownership of other OCS facilities and leases. This new provision authorizes BOEM to take the contingent liabilities associated with the company's co-ownership of these assets into consideration in determining the appropriate proxy credit rating.

BOEM invites comments on the appropriateness of this approach of relying on lessee and grant holder credit ratings, including whether BOEM has proposed an appropriate credit rating threshold of BBB-, and if not, what threshold or set of thresholds would best protect taxpayer interests while not imposing undue burdens on industry. Also, BOEM invites comments on alternative options for determining the need for financial assurance other than credit ratings. Additionally, BOEM invites comments on whether financial assurance should be required of all companies, regardless of credit rating, and the impacts such a requirement might have on OCS investment and on potential taxpayer liabilities.

## **B. Valuing Proved Oil and Gas Reserves**

Under this proposed rule, if BOEM considers the proved reserves on a particular lease when determining whether supplemental financial assurance is required, BOEM would require

the lessee to submit a reserve report for the proved oil and gas reserves (as defined by the SEC regulations at 17 CFR 210.4-10(a)(22)) located on a given lease. The reserve report provided to BOEM would contain the projected future production quantities of proved oil and gas reserves on a per lease basis, the production cost for those reserves also on a per lease basis, and the discounted future cash flows from production. The reserve report would also provide the value of the proved oil and gas reserves per lease, determined under the accounting and reporting standards set forth in SEC Regulation S-X at 17 CFR 210.4-10 and SEC Regulation S-K at 17 CFR, subpart 229.1200.<sup>15</sup> BOEM proposes to use SEC regulations on reserve reporting because they are commonly accepted and understood by offshore oil and gas companies and are already produced by publicly traded companies. This also allows BOEM to rely on the established SEC regulations on the definitions, qualifications, and requirements for proven reserves, rather than attempting to recreate these regulations. BOEM would use this proved oil and gas reserves per-lease value when determining whether the value of the reserves on any given lease exceeds three times the cost of the P70 decommissioning estimate associated with the production of those reserves.

BOEM believes that a property with a sufficient “reserves-to-decommissioning cost” ratio would likely be purchased by another company if a current lessee defaults on its obligations, thereby reducing the risk that decommissioning costs would be borne by the government, and consequently reducing the need for supplemental financial assurance.

A reserves-to-decommissioning cost ratio of one-to-one would mean that the estimated value of remaining oil and gas reserves on a lease is equal to the cost of decommissioning. BOEM does not expect any other company to purchase a lease interest with a ratio of one-to-one, as the new lessee would not receive any return on its investment once it bears the cost of

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<sup>15</sup> Unlike this proposed regulation, the SEC regulations at 17 CFR 229.1202(a)(2) say: “Disclose, in the aggregate and by geographic area and for each country containing 15 percent or more of the registrant's proved reserves, expressed on an oil-equivalent-barrels basis, reserves estimated ....” Although BOEM would require that lessees apply the methodology of the SEC, it would require the analysis on a lease-specific basis.

decommissioning. A reserves-to-decommissioning cost ratio below three-to-one might be considered adequate to encourage a new lessee to take on the cost of purchasing the lease and assuming liability for all of the existing decommissioning obligations, however there may be other factors that would reduce the lease's commercial appeal (*e.g.*, macro-economic conditions, maintenance conditions, or higher than typical operating costs).

In BOEM's judgment, a reserves-to-decommissioning cost ratio that meets or exceeds three-to-one provides enough risk reduction to justify a Regional Director determination that the lessee is not required to provide supplemental financial assurance for that lease. Establishing an appropriate reserves-to-decommissioning cost ratio protects the taxpayer during periods of commodity price volatility. If commodity prices decline in a manner similar to late 2014 through early 2016, for example, BOEM believes a ratio of at least three-to-one assures the property would most likely retain its economic viability and financial attractiveness to potential buyers. BOEM requests comment on whether this is an appropriate threshold, or if there are better approaches and/or data sets available for analysis that would provide BOEM with better certainty that taxpayer interests will ultimately be protected.

## **VII. Phased Compliance with Supplemental Financial Assurance Orders**

BOEM recognizes that the proposed regulations may have a significant financial impact on affected companies. For that reason, BOEM is proposing to phase in the new bonding requirements over a three-year period for existing leaseholders. As part of this proposal, BOEM would require that any company receiving a supplemental financial assurance demand post one-third of the total amount by the deadline listed on the demand letter. A second one-third would be required by the end of the second year (*i.e.*, within 24 months of the receipt of the demand letter). The final one-third payment would be due within 36 months of the receipt of the demand letter. If a lessee's credit rating improves to investment grade during the three-year period, BOEM will discontinue collection of the remaining financial assurance and return any supplemental financial assurance previously provided.

BOEM is requesting comments from potentially affected parties about this phased approach and how it could most effectively be implemented to minimize any unnecessarily adverse effects from an increased supplemental financial assurance requirement.

### **VIII. Appeals Bonds**

When BOEM issues a supplemental financial assurance demand, the affected party has the option to appeal the demand to the Department of the Interior's Board of Land Appeals (IBLA). In many cases in which an appeal is filed, it is accompanied by a request to stay BOEM's supplemental financial assurance order pending the outcome of the appeal. Currently, if the stay is granted, BOEM has no ability to ensure that a facility is covered by adequate financial assurance until the appeal is decided. It is important that BOEM ensure that the government's interests are protected immediately because IBLA appeals may continue for several years. If the company appealing the supplemental financial assurance demand declares bankruptcy before its appeal is resolved, BOEM has no financial assurance to cover the costs of corrective action. For this reason, BOEM is proposing a new requirement whereby any company seeking to stay a supplemental financial assurance demand pending appeal must, as a condition of obtaining a stay of the order, post an appeals bond in the amount of supplemental financial assurance required. If the appeal is successful, the amount of the appeals bond in excess of the amount of supplemental financial assurance determined to be required would be released. If the appeal is unsuccessful, the appeals bond could be replaced or converted into bonds to cover the supplemental financial assurance demand.

### **IX. Proposed Revisions to BOEM Definitions**

To implement the changes proposed above, BOEM proposes to add or revise several definitions in 30 CFR parts 550 and 556. For proposed 30 CFR part 550, BOEM proposes to add new terms and definitions for "Issuer credit rating," "Investment grade credit rating," and "Financial assurance," and to revise the definition of "You." BOEM proposes to add a new term and definition for "Right-of-Use and Easement (RUE)" and remove the separate definitions of

“Right-of-use” and “Easement” in 30 CFR part 550 because those terms are not used separately in the existing or proposed regulatory text. Similarly, for 30 CFR part 556, BOEM proposes to add definitions for the new term “Issuer credit rating” and “Investment grade credit rating,” remove the existing term and definition of “Security or securities,” add a new term and definition for “Financial assurance,” and revise the definitions of “Right-of-Use and Easement (RUE)” and “You,” all of which will match those in proposed 30 CFR part 550.

Additionally, BOEM is replacing the word “sulphur” with the more contemporary spelling of “sulfur” throughout the regulatory text where it has not been previously changed. This edit is a technical correction and does not change any meaning or intent of the regulatory provisions. BOEM proposes updating the word "sulfur" in §§ 550.101, 550.102, and 550.105.

## **X. Section-by-Section Analysis**

BOEM is proposing to revise the following regulations:

### *Part 550-Oil and Gas and Sulfur Operations in the Outer Continental Shelf*

The terms “bond,” “bonding,” “surety bond,” “security,” and “securities” would be replaced throughout this part with the new term “financial assurance.”

#### *Subpart A—General*

##### *Section 550.105 Definitions.*

The proposed rule would add a definition of “Issuer credit rating,” which is a newly defined term in 30 CFR part 550, for the reasons set forth above.

BOEM would remove the terms “Easement,” and “Right-of-use,” neither of which is used separately. In lieu of these two terms, and to define the term actually used in 30 CFR part 550, BOEM would add a definition for “Right-of-Use and Easement (RUE).”

This proposed rule would also add a new term and definition for “Financial assurance” to list the various methods that may be used to ensure compliance with OCS obligations.

The proposed rule would add new definitions for the terms “Transfer” and “Assign” to clarify that these terms are used interchangeably throughout 30 CFR part 550. This change

would also serve to clarify that the related terms “transferee” and “transferor” are interchangeable with “assignee” and “assignor” respectively.

The proposed rule would add a new definition for the term “Investment grade credit rating,” meaning “an issuer credit rating of BBB- or higher, or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization as that term defined by the United States Securities and Exchange Commission.” This definition would become the threshold determination according to which BOEM would define whether financial assurance typically would or would not be required.

BOEM would also revise the definition of the term “You” to now include, depending on the context of the regulations, a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State right-of-use and easement grant holder, a pipeline right-of-way grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the above. This change to the definition of “You” would, in concert with changes proposed in § 550.166, make explicit that any financial assurance provisions applicable to either a State or Federal RUE would apply to the other. *Section 550.160*  
*When will BOEM grant me a right-of-use and easement (RUE), and what requirements must I meet?*

The proposed rule would revise the introductory text of this section to clarify that a RUE grant need not cover both leased and unleased lands. Instead, BOEM may grant a RUE on leased lands (*i.e.*, leased to another party), or unleased lands, or both. The paragraph (a) introductory text would be expanded to include additional activities associated with a RUE, such as using or modifying existing devices. The paragraph (a) introductory text would also be expanded to include the words “seafloor production equipment” and “facilities.” By expanding the RUE requirement to additional activities and devices, BOEM would ensure that all associated activities that may have an impact on the environment of the OCS are included.

BOEM also proposes to revise paragraph (b) to provide that a RUE grant holder must

exercise the grant according to the terms of the grant and the applicable regulations of 30 CFR part 550, as well as the requirements of 30 CFR part 250, subpart Q.

BOEM also proposes to revise paragraph (c) to update the cross-reference to BOEM's lessee qualification requirements, §§ 556.400 through 556.402, and to replace the language in this paragraph referencing "bonding requirements" with a cross reference to § 550.166, which BOEM also proposes to revise to add specific criteria for financial assurance demands, as provided below.

*Section 550.166 If BOEM grants me a RUE, what financial assurance must I provide?*

The proposed rule would revise the section heading by removing the reference to "a State lease" and replacing "surety bond" with "financial assurance." This reflects the change in the text of paragraph (b) of this section that provides that the financial assurance requirements of this section would apply to both a RUE granted to serve a State lease and one serving an OCS lease. The term "surety bond" would also be replaced with "financial assurance" throughout the section.

BOEM proposes to revise paragraph (a) to require \$500,000 in financial assurance that guarantees compliance with the terms and conditions of any OCS RUEs you hold. Previously, paragraph (a) only required \$500,000 in financial assurance for RUEs associated with State leases.

BOEM proposes to add paragraph (a)(1) to allow area-wide lease financial assurance to satisfy the requirements of paragraph (a), provided it is in excess of the \$500,000 base RUE financial assurance requirement and is amended to guarantee compliance with all the terms and conditions of the RUE(s) it covers.

BOEM proposes to add paragraph (a)(2) to allow the Regional Director to lower the required financial assurance amount for research and other similar types of RUEs, which reflects BOEM's past experience that the total liability exposure can be well below \$500,000 for such RUEs.

BOEM proposes to add paragraph (a)(3) to ensure that the financial assurance requirements of § 556.900 (d) through (g) and § 556.902 would apply to the requirements stated in paragraph (a).

BOEM would also add to paragraph (b) in this section to provide that, if BOEM grants a RUE that serves either an OCS lease or a State lease, the Regional Director may require the grant holder to provide supplemental financial assurance to ensure compliance with the obligations under the RUE grant. BOEM would use the same issuer credit rating or proxy credit rating criteria found in proposed § 556.901(d)(1) and (2) to evaluate a RUE grant holder as BOEM proposes to apply to lessees, *i.e.*, the Regional Director may require supplemental financial assurance if the grant holder does not have an issuer credit rating or a proxy credit rating that meets the criteria set forth in proposed § 556.901(d)(1). Like lessees, most RUE holders are oil and gas companies, and BOEM would, therefore, use the same financial criteria to determine the need for additional financial assurance from RUE holders to provide consistency.

BOEM proposes to revise paragraph (b)(1) to update the regulatory citation in existing § 550.166(b)(1) to provide that the supplemental financial assurance must meet the requirements for lease surety bonds or other financial assurance provided in § 556.900 (d) through (g) and § 556.902.

The proposed rule would also revise § 550.166(b)(2) to include “BOEM and BSEE orders” in the list of costs and liabilities, and clarify that RUE holders should also comply with the decommissioning regulations at 30 CFR part 250, subpart Q.

The proposed rule would also add new paragraph (c) to provide that if a RUE grant holder fails to replace any deficient financial assurance upon demand, or fails to provide supplemental financial assurance upon demand, BOEM may assess penalties, request BSEE to suspend operations on the RUE, and/or initiate action for cancellation of the RUE grant. Proposed paragraph (c) provides for actions similar to those available to BOEM pursuant to proposed § 556.900(h) if a lessee fails to provide sufficient financial assurance.

*Section 550.167 How may I obtain or assign my interest in a RUE?*

The proposed rule would add § 550.167 to establish the ability to assign a RUE interest. Previously, RUE interests were not assigned, because assignment of RUE interests was not addressed in the existing regulations. This change is being proposed to allow RUE assignments. This new section would also require a RUE assignee to provide the information outlined in existing § 550.161, which currently must be provided only by applicants for a new RUE. Paragraph (a) of § 550.167 would establish that BOEM must approve all assignments of all or part of a RUE interest. Paragraphs (b)(1) through (4) would establish the circumstances in which BOEM may disapprove an assignment of a RUE, mirroring the circumstances under which BOEM may disapprove the assignment of a lease or sublease pursuant to § 556.704. These circumstances are intended to prevent the assignment of a RUE when, for example, the assignment would result in inadequate financial assurance.

*Subpart J—Pipelines and Pipeline Rights-of-Way*

*Section 550.1011 Financial assurance requirements for pipeline right-of-way (ROW) grant holders.*

The proposed rule would revise this section in its entirety. The section heading would be revised to read, “Financial assurance requirements for pipeline right-of-way (ROW) grant holders,” to clarify that a pipeline ROW grant holder may meet the requirements of this section by providing bonds or other types of financial assurance, in order to expand the language to include forms of financial assurance in addition to bonds.

Currently, § 550.1011(a) requires that an applicant or a holder of a ROW must provide and maintain a \$300,000 bond (in addition to bond coverage required in 30 CFR parts 256 and 556), and potentially additional security, if the Regional Director determines the latter is needed. The proposed rule would revise this paragraph to require that assignees, as well as applicants and holders, are required to provide and maintain the \$300,000 financial assurance to make clear that financial assurance requirements would apply to an assignment of a ROW grant. The proposed

rule would remove the reference to 30 CFR part 256 currently in paragraph (a)(1) because 30 CFR part 256 does not contain pipeline bonding requirements. The proposed rule would clarify that the requirement to provide area-wide financial assurance for a pipeline ROW grant is separate and distinct from the financial assurance coverage required for leases in 30 CFR part 556 and that required for RUEs in 30 CFR part 550. Existing paragraph (a)(2) would be removed because supplemental financial assurance requirements would be covered by proposed paragraph (d).

BOEM would also remove existing paragraph (b), which defines the three recognized OCS areas, because it is made redundant by the reference to § 556.900(b) in revised paragraph (a). BOEM proposes to replace the removed paragraph (b) with a new paragraph (b) to provide that the requirement under paragraph (a) to furnish and maintain area-wide financial assurance may be satisfied if the operator or a co-grant holder provides area-wide pipeline right-of-way financial assurance in the required amount that guarantees compliance with the regulations and the terms and conditions of the grant, as discussed in Section IV.C of this preamble.

BOEM also proposes to revise paragraph (c) with a provision stating that the requirements for lease financial assurance in § 556.900 (d) through (g) and § 556.902 would apply to the area-wide financial assurance required in paragraph (a) of this section. This cross-reference incorporates the financial assurance provisions from 30 CFR part 556 that specify the required content, form, and administrative handling of financial assurance. BOEM would remove existing paragraphs (c) and (d), which would be made redundant by proposed new paragraph (f).

BOEM would add paragraph (d) to provide that the Regional Director may determine that supplemental financial assurance is necessary to ensure compliance with the obligations under a pipeline ROW grant based on an evaluation of the grant holder's ability to carry out present and future obligations on the pipeline ROW. BOEM proposes to use the same issuer credit rating or proxy credit rating criteria to evaluate a pipeline ROW grant holder, or co-grant holder, as BOEM proposes to apply to lessees in § 556.901(d)(1). BOEM, as noted earlier in this preamble,

has found that reliance on credit ratings better evaluates financial stability, and is thus applying the same financial criteria in evaluating financial stability of grant holders.

BOEM also proposes to add additional supplemental financial assurance requirements in new paragraph (e)(1) stating that the supplemental financial assurance must meet the general requirements for lease surety bonds or other financial assurance, as provided in § 556.900(d) through (f) and the proposed revisions to paragraph (g) and § 556.902. This cross-reference incorporates the financial assurance provisions from 30 CFR part 556 that specify the required content, form, and administrative handling of financial assurance. New paragraph (e)(2) proposes that any supplemental financial assurance for a pipeline ROW would be required to cover liabilities for regulatory compliance and compliance with BOEM and BSEE orders, decommissioning of all pipelines or other facilities, and clearance from the seafloor of all obstructions created by the pipeline ROW operations, in accordance with the regulations set forth in 30 CFR part 250, subpart Q. See Section IV.C of this preamble for further discussion. The proposed rule would also add new paragraph (f) to provide that if a pipeline ROW grant holder fails to replace any deficient financial assurance upon demand or fails to provide supplemental financial assurance upon demand, the Regional Director may assess penalties, request BSEE to suspend operations on the pipeline ROW, and/or initiate action for forfeiture of the pipeline ROW grant in accordance with § 250.1013. *Part 556—Leasing of Sulfur or Oil and Gas and Bonding requirements in the Outer Continental Shelf*

The proposed rule would make a technical correction to the authority citation for part 556 by removing the citation to 43 U.S.C. 1801-1802, because neither of these two sections contains authority allowing BOEM to issue or amend regulations.

The proposed rule would also remove the citation to 43 U.S.C. 1331 note, which is where the Gulf of Mexico Energy Security Act of 2006 is set forth. While this statute required BOEM to issue regulations concerning the availability of bonus or royalty credits for exchanging eligible leases, the deadline for applying for such a bonus or royalty credit was October 14, 2010;

therefore, lessees may no longer apply for such credits. BOEM no longer needs the authority to issue regulations under that statute and has removed all regulations on this topic from 30 CFR part 556, except for § 556.1000, which provides that lessees may no longer apply for such credits.

The terms “bond,” “bonding,” and “surety bond” would be replaced throughout this part with the new term “financial assurance,” as discussed earlier in this preamble. This change includes changing the Title of Part 556 from “Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf” to “Leasing of Sulfur or Oil and Gas and Financial Assurance Requirements in the Outer Continental Shelf.”

#### *Subpart A—General Provisions*

##### *Section 556.105 Acronyms and definitions.*

The proposed rule would add a definition of “Issuer credit rating” and “Investment grade credit rating,” which are identical to the proposed additions in § 550.105.

The proposed rule would also revise the definition of “Right-of-Use and Easement (RUE)” to include the words “to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment.” This definition would be the same as the definition of “Right-of-Use and Easement (RUE)” proposed for § 550.105.

The proposed rule would also add a definition for “Financial assurance” to clarify that various methods can be used to ensure compliance with OCS obligations. This definition would be the same as the definition of “Financial assurance” proposed for § 550.105.

The proposed rule would add definitions for the new terms “Transfer” and “Assign” to clarify that that these terms are used interchangeably throughout 30 CFR part 556. This change would also serve to clarify that the related terms “transferee” and “transferor” are interchangeable with “assignee” and “assignor,” respectively.

The proposed rule would also revise the definition of the term “You” to include, depending on the context of the regulations, a bidder, a lessee (record title owner), a sublessee

(operating rights owner), a Federal or State right-of-use and easement grant holder, a pipeline right-of-way grant holder, assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the above. This change to the definition of “You,” in concert with changes proposed in § 550.166, would make explicit that any provisions applicable to either a State or Federal RUE would apply to the other, and that any distinctions between the two with respect to financial assurance are being removed. This change is in concert with changes proposed in § 550.105.

*Subpart G—Transferring All or Part of the Record Title Interest in a Lease*

*Section 556.704 When may BOEM disapprove an assignment or sublease of an interest in my lease?*

The proposed rule would revise paragraph (a) to clearly state that all parties involved in the assignment of a record title interest in a lease must be in compliance with all applicable regulations and orders, including financial assurance requirements, or BOEM may disapprove an assignment or sublease, consistent with changes to 30 CFR part 550 proposed in this rulemaking. The proposed rule would replace the word “would” in the section title with “may” to better reflect this discretion.

*Subpart H—Transferring All or Part of the Operating Rights in a Lease*

*Section 556.802 When may BOEM disapprove the transfer of all or part of my operating rights interest?*

The proposed rule would revise the existing section heading to replace “assignment” with “transfer” consistent with the new definitions proposed for both terms. The proposed rule would revise paragraph (a) to clearly state that for the transferee to receive approval for the transfer of operating rights in a lease, the transferee must be in compliance with all applicable regulations and orders to provide financial assurance requirements before BOEM may approve an assignment, consistent with changes to 30 CFR part 550 proposed in this rulemaking. The proposed rule would replace the word “would” in the section title with “may” to better reflect

this discretion.

*Subpart I—Bonding or Other Financial Assurance*

*Section 556.900 Financial assurance requirements for an oil and gas or sulfur lease.*

The proposed rule would revise the section heading to read, “Financial assurance requirements for an oil and gas or sulfur lease” in order to ensure that the term “bonding” has been consistently replaced with “financial assurance” and to clarify that a number of forms of financial assurance can be provided, and not just surety bonds, consistent with changes to 30 CFR part 550 proposed in this rulemaking.

BOEM proposes to add paragraph (a)(4) to make clear that any supplemental financial assurance required by the Regional Director must be provided before a new lease will be issued or an assignment of a lease approved.

The proposed rule would also revise the introductory text of paragraph (g) to replace the word “security” with “financial assurance,” and to add the word “surety” before “bond” in two places to clarify that in those cases the regulation is referring to a “surety bond.”

The proposed rule would revise the introductory text of paragraph (h) to replace the words “bond coverage” with “financial assurance” to clarify that surety bonds are not the only means of meeting the requirement. The proposed rule would also revise paragraph (h)(2) in recognition that BSEE, rather than BOEM, is the agency with authority to suspend production or other operations on a lease.

The proposed rule would add paragraph (i) to ensure consistency with the RUE financial assurance requirements by providing that area-wide lease surety bonds pledged to satisfy the financial assurance requirements for RUEs may be called in for performance of obligations on which the holder of a RUE defaults.

*Section 556.901 Base financial assurance and supplemental financial assurance.*

The proposed rule would revise the section heading to read, “Base financial assurance and supplemental financial assurance,” because this section covers both base financial assurance

and supplemental financial assurance requirements.

*Section 556.901(a)*

The proposed rule would also revise paragraph (a)(1)(i) introductory text to replace the word “bond” with “lease exploration financial assurance” to be consistent with the terminology used in existing paragraph (a)(1)(ii), which BOEM does not propose to change.

*Section 556.901(b)*

The proposed rule would eliminate the parenthetical “(the lessee)” from the introductory text as it is made redundant by the proposed revised definition of “You.” The proposed rule would also revise paragraph (b)(1)(i) introductory text to replace the word “bond” with “lease development financial assurance” for consistency with the terminology used in existing paragraph (b)(1)(ii), which BOEM does not propose to change.

*Section 556.901(c)*

The proposed rule would also revise paragraph (c) to remove the words “authorized officer” and replace them with “Regional Director,” and remove the words “lease bond coverage” and “a lease surety bond” and replace them in each instance with “financial assurance” to clarify that the Regional Director can review whether BOEM would be adequately secured by a surety bond, or another type of financial assurance, for an amount less than the amount proposed in paragraph (b)(1), but not less than the estimated cost for decommissioning.

*Section 556.901(d)*

BOEM proposes to combine the provisions of the existing paragraph (d) introductory text and the existing introductory paragraph (d)(1) to provide that the Regional Director may determine that supplemental financial assurance is required to ensure compliance with the obligations under a lease if the lessee does not meet at least one of the criteria provided in proposed paragraphs (d)(1) through (4) below. For further discussion, see Section V of this preamble.

*Section 556.901(d)(1)*

BOEM proposes to revise paragraph (d)(1) to set forth the criteria BOEM would use to evaluate the ability of a lessee to carry out present and future obligations. Under this paragraph, BOEM would use an issuer credit rating from a NRSRO, as defined by the SEC, greater than or equal to either BBB- from Standard & Poor's (S&P) Ratings Service or Baa3 from Moody's Investor Service, or the equivalent from another NRSRO. If different NRSROs provide different ratings for the same company, BOEM would apply the higher rating, as discussed in section IV.A of this preamble.

*Section 556.901(d)(2)*

BOEM proposes to revise paragraph (d)(2) stating that BOEM could also use a proxy credit rating calculated by BOEM based on audited financial information from the most recent fiscal year (including an income statement, balance sheet, statement of cash flows, and the auditor's certificate) greater than or equal to either BBB- from S&P's Ratings Service or Ba3 from Moody's Investor Service, or their equivalent from another NRSRO. The proxy credit ratings that BOEM would calculate on behalf of lessees would be structured in the same scale as the standard ratings (*i.e.*, AAA to D). The audited financial information from the most recent fiscal year that BOEM used to determine the proxy credit rating must include a twelve-month period within the twenty-four months prior to the lessee's receipt of the Regional Director's determination that the lessee must provide supplemental financial assurance. When determining a proxy credit rating, the Regional Director will consider any additional liabilities that may encumber a lessee's ability to carry out future obligations. Under the proposed rule, the lessee would be obligated to provide the Regional Director with information regarding its joint-ownership interests and other liabilities associated with OCS leases, which might not otherwise be accounted for in the audited financial information provided to BOEM.

*Section 556.901(d)(3)*

BOEM proposes to add new paragraph (d)(3) to address the situation where the lessee does not meet the criteria in proposed paragraphs (d)(1) or (2), but one or more co-lessee(s) does

meet those criteria. The Regional Director may require a lessee to provide supplemental financial assurance on a lease-by-lease basis if no co-lessee has an issuer credit rating or proxy credit rating that meets the threshold set forth in paragraphs (d)(1) or (2), as discussed in Section IV.A of this preamble.

*Section 556.901(d)(4)*

BOEM proposes to add new paragraph (d)(4) to set forth the criterion the Regional Director would use if the lessee does not meet the criteria in proposed paragraphs (d)(1), (2), or (3). In this instance, the Regional Director would assess each lease to determine whether the value of the proved oil and gas reserves on the lease exceed three times the estimated cost of the decommissioning associated with the production of those reserves. Under paragraph (d)(4), the Regional Director's assessment would be based on the evaluation of proved oil and gas reserves following the methodology set forth in SEC Regulation S-X at 17 CFR 210.4-10 and SEC Regulation S-K at 17 CFR 229.1200. BOEM also proposes new paragraphs (d)(4)(i) and (ii), which state that, when implementing this criterion, BOEM will use decommissioning cost estimates, including a BSEE-generated probabilistic estimate at the P70 level, when available, or, if such estimate is not available, BOEM will use the BSEE-generated deterministic estimate.

*Section 556.901(e)*

BOEM proposes to redesignate existing paragraph (d)(2) as paragraph (e) and revise it to provide that a lessee may satisfy the Regional Director's demand for supplemental financial assurance either by increasing the amount of its existing financial assurance or by providing additional surety bonds or other types of acceptable financial assurance.

*Section 556.901(f)*

BOEM proposes to redesignate existing paragraph (e) as paragraph (f) and revise to remove the word "bond" and replace it with "supplemental financial assurance," a term that includes a surety bond or another type of financial assurance. BOEM also proposes to modify the language of new paragraph (f) to establish that, in determining the amount of supplemental

financial assurance, the Regional Director will consider the lessee's potential underpayment of royalty and the cumulative decommissioning obligations as established in the manner described in proposed paragraph (d)(3) of this section, *i.e.*, the use of the appropriate BSEE estimate.

*Section 556.901(g)*

BOEM proposes to redesignate existing paragraph (f) as new paragraph (g) and revise it to replace the word "security" with "financial assurance" throughout.

Existing 30 CFR 556.901(f)(2) includes a statement to the effect that, if a company requests a reduction of the amount of the original bond required, the Regional Director may agree to such a reduction provided that he or she finds that "the evidence you submit is convincing." BOEM proposes to replace the current regulatory text with the following statement in new paragraph (g)(2): "Upon review of your submission, the Regional Director may reduce the amount of financial assurance required," as discussed in Section IV of this preamble.

*Section 556.901(h)*

BOEM proposes to add a new paragraph (h) to describe the limited opportunity lessees will have to provide the required supplemental financial assurance in three phased installments during the first three years after the effective date of this regulation, subject to the conditions of proposed paragraphs (h)(1) and (2). A three-year approach would allow companies to raise the relevant capital through operations over a longer period of time, as discussed in section VII of this preamble. Accordingly, it would reduce bankruptcy risk and ensure a greater level of financial protection for the government and taxpayers.

BOEM proposes to add new paragraphs (h)(1)(i) through (iii) to establish the timing and amounts of phased supplemental financial assurance that would need to be provided. Payments would be required in three installments of one-third that of the demand, the first of which would be required within the timeframe specified in the demand letter, or within 60 calendar days of receiving the demand letter if no timeframe is specified. The second one-third would be required within 24 months from the date of receipt of the original demand letter, and the final payment

would be due within 36 months from the date of the receipt of the original demand letter.

BOEM proposes to add a new paragraph (h)(2) to establish a procedure in case a demand that has been approved for phased compliance is not met within the timeframes established by paragraphs (h)(1)(i) through (iii). If a payment is missed, the Regional Director will notify the party of the failure to meet the timeframe and that it will no longer be eligible to meet the supplemental financial assurance demand by using the phased compliance option set forth in proposed paragraph (h). Moreover, the remaining balance of the demand would become due ten calendar days after the Regional Director's notification is received.

*Section 556.902 General requirements for bonds or other financial assurance.*

The proposed rule would revise the section heading to read, "General requirements for bonds or other financial assurance," to recognize that other types of financial assurance, such as a dual-obligee bond or a pledge of Treasury securities, may be provided under 30 CFR part 556.

These revisions propose that the same general requirements for surety bonds provided by lessees, operating rights owners, or operators of leases, also apply to surety bonds provided by RUE grant and pipeline ROW grant holders. The proposed rule would therefore also revise paragraph (a) to include "grant holder" and to cover surety bonds provided under 30 CFR part 550. The requirements of this section are those that apply broadly to all companies having to provide financial assurance to BOEM for an OCS oil and gas or sulfur lease. Additional requirements applicable specifically to RUEs and ROWs are described in proposed §§ 550.166 and 550.1011, respectively.

The proposed rule would add "or grant" after "lease" to clarify the change to include grant holders in paragraph (a)(2). The rulemaking would also add compliance with "all BOEM and BSEE orders" as a requirement to ensure that providers of financial assurance are aware that such financial assurance guarantees compliance with BOEM and BSEE orders as well as with the regulations and the terms of a lease, ROW, or RUE. This addition is necessary because a requirement to provide supplemental financial assurance arises from a BOEM order. "BOEM

and BSEE orders” would mean any order issued by the relevant bureau, such as a BSEE order to decommission, or a BOEM order to provide supplemental bond.

The proposed rule would revise paragraph (a)(3) to include the obligations of all record title owners, operating rights owners, and operators on the lease.

The proposed rule would also revise paragraph (e)(2) to clarify that the use of Treasury securities as financial assurance requires a pledge of Treasury securities, as provided in § 556.900(f).

The proposed rule would add a new paragraph (g) to recognize the option to seek an informal resolution of a surety bond demand pursuant to 30 CFR 590.6, which contains information regarding informal resolutions. This paragraph would further provide that a request for an informal resolution of a dispute concerning the Regional Director’s decision to require supplemental financial assurance will not affect the applicant’s ability to request a phased payment of its supplemental financial assurance demand under proposed § 556.901(h).

The proposed rule would add a new paragraph (h) to address risks arising in connection with the lessee’s and grant holder’s ability to appeal a demand for supplemental financial assurance to the Interior Board of Land Appeals (IBLA) pursuant to the regulations in 30 CFR part 590. The proposed rule would add an additional requirement to the IBLA appeals process whereby, if an appellant requests that the IBLA stay the supplemental financial assurance demand, the appellant would be required to post an appeals surety bond equal to the amount of supplemental financial assurance that the appellant seeks to stay before any stay could go into effect. Because IBLA appeals may continue for several years, it is important that BOEM ensure that the government’s interests are protected. The appeals surety bond requirement would prevent the government from being left with no security if the appellant filed bankruptcy before the appeal process ended.

#### *Section 556.903 Lapse of financial assurance.*

The proposed rule would replace the word “bond” in the section title with “financial

assurance” for consistency with the terminology change made throughout the rulemaking. The proposed rule would revise paragraph (a) to add after the word “surety”, “guarantor, or the financial institution holding or providing your financial assurance” and to include references to the financial assurance requirements for RUE grants (§ 550.166) and pipeline ROW grants (§ 550.1011). The proposed rule would also revise paragraph (a) by removing the words “terminates immediately” and substituting “must be replaced.” The proposed rule would replace the word “promptly” with a specific timeline of within seven calendar days of learning of a negative event for the financial assurance provider and would also add a 30-calendar day timeframe in which the party must provide other financial assurance from a different financial assurance provider.

BOEM also proposes to revise the first sentence of paragraph (b) by inserting “or financial institution” after “guarantor,” to make the provision apply to all types of financial assurance providers, including those offering decommissioning accounts. BOEM also proposes to revise the second sentence of paragraph (b) for consistency in terminology by inserting the words “or other financial assurance” after the word “bonds” and inserting the words “guarantor, or financial institution” after the word “surety”, so that all surety bonds or other financial assurance instruments must require all financial assurance providers to notify the Regional Director within 72 hours of learning of an action filed alleging that the lessee or grant holder, or their financial assurance provider, is insolvent or bankrupt.

#### *Section 556.904 Decommissioning accounts.*

The proposed rule would revise the section heading and the term “abandonment accounts” throughout the section to read “decommissioning accounts,” in accordance with BOEM policy and accepted terminology used in the industry. The words “lease-specific” would be removed throughout this section to remove the implication that such an account could only pertain to one lease, thereby clarifying that a decommissioning account could be used for one lease or several leases, a RUE grant, or a pipeline ROW grant, or a combination thereof, as

discussed in section V.B of this preamble.

BOEM proposes to revise paragraph (a) to remove the term “lease-specific” and replace it with “decommissioning,” and to add references to the base and supplemental financial assurance regulation (proposed § 556.901(d)), as well as the financial assurance regulations for RUE grants (proposed § 550.166(b)) and pipeline ROW grants (proposed § 550.1011(d)), consistent with the changes mentioned in the preceding paragraph. Although the paragraph (a) introductory text would continue to allow a lessee or grant holder to establish a decommissioning account at a federally insured financial institution, this proposed rule would eliminate the existing restriction in paragraph (d) that such deposits not exceed the FDIC/FSLIC insurance limits and the reference to paragraph (a)(3), which is being revised and is no longer relevant to withdrawal of funds from a decommissioning account.

The proposed rule would re-arrange the existing sentence constituting § 556.904(a)(1). The proposed rule would also revise paragraph (a)(2) to remove the words “as estimated by BOEM” to clarify that BOEM does not estimate decommissioning costs, but rather uses the estimates of decommissioning costs determined by BSEE. The proposed rule would also revise paragraph (a)(2) to require funding of a decommissioning account “pursuant to a schedule that the Regional Director prescribes,” as opposed to “within the timeframe the Regional Director prescribes” as existing § 556.904(a)(2) now states.

The proposed rule would revise paragraph (a)(3) to remove the requirement to provide binding instructions to purchase Treasury securities for a decommissioning account under certain circumstances. The proposed rule would replace the existing language with a new provision providing that if you fail to make the initial payment or any scheduled payment into the decommissioning account, you must immediately submit, and subsequently maintain, a surety bond or other financial assurance in an amount equal to the remaining unsecured portion of your estimated decommissioning liability. This change reflects BOEM’s current policy to order a surety bond or other financial assurance in the event the payments into the decommissioning

account are not timely made.

The proposed rule would revise paragraph (b) by removing “lease-specific” and substituting “decommissioning.”

The proposed rule would also remove existing paragraphs (c) and (d), which concern the use of pledged Treasury securities to fund a decommissioning account, as discussed in section V.B of this preamble. Removing the requirement in existing paragraph (d) that the account holder must purchase Treasury securities when the amount in the account equals the maximum amount insurable by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation will make these accounts more attractive to parties who may desire to use this method of providing supplemental financial assurance. The removal of existing paragraphs (c) and (d) would not preclude the use of Treasury securities to fund a decommissioning account. Existing paragraph (e) would be redesignated as paragraph (c) except that the word “pledged” would be removed, and “other revenue stream” would be added to the list of financial assurance options.

The proposed rule would add a revised paragraph (d), which would describe the Regional Director’s discretion to authorize BOEM to provide funds from a decommissioning account to a liable party that performs the decommissioning.

#### *Section 556.905 Third-party guarantees.*

The proposed rule would revise the section heading to read, “Third-party guarantees.” The proposed rule would also revise the section throughout to remove the introductory titles of each paragraph to ensure consistency in the proposed rule’s format.

#### *Section 556.905(a)*

BOEM proposes to revise paragraph (a) to include a cross-reference to proposed § 550.166(b) (related to RUEs) and proposed § 550.1011(d)) (related to pipeline ROWs) in addition to the existing reference to proposed § 556.901(d) (related to base financial assurance for leases), to clarify that a third-party guarantee may be used as a type of supplemental financial

assurance for not only leases, but for RUE grants and pipeline ROW grants as well. This is further discussed in Section V.A of this preamble.

BOEM would also revise paragraph (a)(1) to require that the guarantor, not the guarantee, as provided in the existing regulation, must meet the criteria in proposed § 556.901(d)(1), as the factors in proposed § 556.901(d) more properly apply to an entity, such as a guarantor, than to a document, such as a guarantee. See section V.A of this preamble for further discussion. BOEM would retain existing paragraph (a)(2), but would revise it to include a requirement, which is found in existing paragraph (a)(4), that the guarantor or guaranteed party must submit a third-party guarantee “containing each of the provisions in proposed paragraph (d) of this section.” As discussed below, paragraph (d) is being revised to no longer use the term “indemnity agreement” and to provide instead that the provisions that BOEM previously required a lessee or grant holder to include in indemnity agreements must be included in a third-party guarantee agreement. This terminology is changed to clarify that the government is not required to incur the expenses of decommissioning before demanding compensation from the guarantor. The proposed rule would also remove existing paragraphs (a)(3) and (a)(4), which would be superseded by other revisions to this section.

#### *Section 556.905(b)*

The proposed rule would redesignate existing paragraph (b) as paragraph (c) and revise the introductory text to remove the reference to existing paragraph (c)(3) of this section because the requirements in that paragraph would be superseded in this proposed rule. The proposed rule would replace this reference with a reference to paragraph (a)(1) of this section in paragraph (c) as it is proposed to be revised. The proposed rule would add new paragraph (b) to allow guarantors to limit their guarantees to a fixed dollar amount as agreed to by BOEM. BOEM is proposing this change because the existing regulations do not clearly limit the liability of a guarantor to a fixed monetary amount stated in the guarantee. Therefore, few parties were willing to use third-party guarantees in the past. Because the cessation of production is neither desirable

nor easily accomplished by an operator, the proposed rule would also revise existing paragraph (b)(2) to remove the requirement that, when a guarantor becomes unqualified, you must “cease production until you comply with the surety bond coverage requirements of this subpart.”

Instead, the language in revised redesignated paragraph (c) would be revised to provide that you must, within 72 hours, “[s]ubmit and subsequently maintain a surety bond or other financial assurance covering those obligations previously secured by the third-party guarantee.”

The proposed rule would remove existing paragraph (c) as the language would be superseded by the new language in § 556.905(a).

#### *Section 556.905(d)*

The proposed rule would revise paragraph (d)(1) introductory text to read “If you fail to comply with the terms of any lease or grant covered by the guarantee, or any applicable regulation, your guarantor must either:” to be consistent with the revision of paragraph (a) to allow the use of a third-party guarantee for a RUE grant or a pipeline ROW grant.

The proposed rule would revise paragraph (d)(1)(i) to clarify that the corrective action required is to bring the lease or grant into compliance with its terms, or any applicable regulation, to the extent covered by the guarantee.

The proposed rule would revise paragraph (d)(1)(ii) to clarify that the liability only extends to that covered by the guarantee and that payment does not result in the cancelation of the guarantee, but only a reduction in the remaining value equal to the amount provided.

The proposed rule would remove existing subparagraph (d)(2) to be consistent with the revision to remove existing paragraph (c). As a result, existing paragraph (d)(3) would be redesignated as paragraph (d)(2) and existing paragraph (d)(4) would be redesignated as paragraph (d)(3).

The proposed rule would revise the redesignated paragraphs (d)(2)(ii) and (iii) to remove the words “your guarantor’s” and replace them with the word “the” to clarify that redesignated paragraph (d)(2) would apply to the guarantee itself.

The proposed rule would revise proposed paragraph (d)(3) to replace the term “a suitable replacement security instrument” with “acceptable replacement financial assurance” for clarity and would include the requirement that appears in existing § 556.905(d)(4) that any replacement financial assurance must be provided before the termination of the period of liability of the third-party guarantee.

*Section 556.905(e)*

The proposed rule would also revise paragraph (e) to provide that BOEM will cancel a third-party guarantee under the same terms and conditions as those proposed in §§ 556.906(b) and (d)(3).

*Section 556.905(f) through (k)*

BOEM also proposes to add new paragraphs (f) through (k) to replace the provisions of existing paragraph (e). The new paragraphs mirror the provisions of existing paragraph (e) while making minor adjustments to accommodate the new format and add clarification. The term “indemnity agreement” would be replaced with “third-party guarantee agreement” throughout.

*Section 556.906 Termination of the period of liability and cancellation of financial assurance.*

The proposed rule would replace the words “security” and “surety bond” with “financial assurance” and “surety” with “financial assurance provider” for consistency with the changes throughout the proposed rule. The section title would also be revised so that “a bond” is replaced with “financial assurance.”

The proposed rule would revise existing paragraph (b)(1) to remove the word “terminated” in two instances and replace it with “cancelled” to be consistent with the existing paragraph (b) introductory text, which provides that the Regional Director will cancel your previous financial assurance when you provide a replacement, subject to the conditions provided in existing paragraphs (b)(1) through (3). BOEM would also remove the word “for” before “by the bond” in paragraph (b)(1) for grammatical reasons.

The proposed rule would revise existing paragraph (b)(2) to also add cross-references to

§ 550.166, which is the financial assurance regulation for RUE grants, and § 550.1011, which is the financial assurance regulation for pipeline ROW grants, and would revise existing paragraph (b)(3) to also reference supplemental financial assurance regulations for RUE grants (proposed § 550.166(b) and pipeline ROW grants (proposed § 550.1011(d)). BOEM proposes to delete the word “base” in front of financial assurance in existing paragraph (b)(2) to propose that the new financial assurance would replace whatever financial assurance that previously existed, whether that financial assurance consisted of a base bond and/or any prior supplemental financial assurance.

The proposed rule would revise the paragraph (d) introductory text to cover financial assurance cancellations and return of pledged financial assurance and, in the table, would remove the middle column entitled, “The period of liability will end,” because it is redundant with the provisions in proposed paragraphs (a) through (c).

In existing paragraph (d), in the column in the table entitled “For the following type of bond,” BOEM proposes to remove the words “type of bond” and replace those words with a colon at the top of the table so that this paragraph would apply to surety bonds or other financial assurance, as applicable. Paragraph (d)(1) would also be revised to include a cross-reference to base financial assurance submitted under proposed § 550.166(a) (for RUE grants) and proposed § 550.1011(a) (for pipeline ROW grants). BOEM would also revise paragraph (d)(2) in the same column to include a reference to supplemental financial assurance submitted under proposed § 550.166(b) and proposed § 550.1011(d).

The proposed rule would revise paragraph (d) to amend the heading of the column entitled, “Your bond will be cancelled,” to read, “Your financial assurance will be reduced or cancelled, or your pledged financial assurance will be returned,” to clarify that financial assurance may be reduced or cancelled and pledged financial assurance, or a portion thereof, may be returned, and to specify other circumstances under which the Regional Director may cancel supplemental financial assurance or return pledged financial assurance. While the existing

criteria identify most instances when cancellation of financial assurance is appropriate, occasionally there are other circumstances where cancellation would be warranted. The proposed rule would allow cancellation when BOEM determines, using the criteria set forth in proposed § 556.901(d), 550.166(b), or 550.1011(d), as applicable, that a lessee or grant holder no longer needs to provide supplemental financial assurance for its lease, RUE grant, or pipeline ROW grant when the operations for which the supplemental financial assurance was provided ceased prior to accrual of any decommissioning obligation; or when cancellation of the financial assurance is appropriate because BOEM determines such financial assurance never should have been required under the regulations.

The proposed rule would add a new paragraph (d)(3) in the table in paragraph (d) to address the cancellation of a third-party guarantee. In the past, parties have expressed concern to BOEM that the regulations, although they expressly allow for the termination of the period of liability, do not clearly allow for the cancellation of the guarantee. This addition would allow BOEM to cancel a third-party guarantee under the same terms and conditions that apply to cancellation of other types of financial assurance, as provided in proposed § 556.906(d)(2).

The proposed rule would revise the introductory text in paragraph (e) to remove the words “or release” because the term “release” is undefined and not used in practice. Likewise, the proposed rule would remove the words “or released” from paragraph (e)(2). No substantive change is intended; rather BOEM seeks to clarify the meaning of the existing provision.

The proposed rule would also revise paragraph (e) to reference RUE grants and pipeline ROW grants to provide that the Regional Director may reinstate the financial assurance on the same grounds as currently provided for reinstatement of lease financial assurance.

*Section 556.907 Forfeiture of bonds or other financial assurance.*

The proposed rule would replace the words “security,” “surety bond,” or “third-party guarantee” with “financial assurance” and “surety” with “financial assurance provider” for consistency with the changes throughout the proposed rule.

The proposed rule would revise the section heading to read, “Forfeiture of bonds or other financial assurance” because the use of “or” is sufficient in this instance. The proposed rule would revise paragraph (a)(1) to include surety bonds or other financial assurance for RUE grants and pipeline ROW grants, in addition to leases, in the forfeiture provisions of this section. BOEM also proposes to clarify that the Regional Director may call for forfeiture of all or part of a surety bond or other form of financial assurance, or demand performance from a guarantor, if the lessee or grantee covered by the financial assurance refuses or is unable to comply with any term or condition of a lease, a RUE grant, or a pipeline ROW grant, as well as any regulation. Throughout this section, BOEM proposes to add references to a grant, a grant holder, and grant obligations to implement the revisions in proposed paragraph (a)(1). BOEM proposes to revise (a)(2) to replace “other form of security” with “other form of financial assurance” for consistent terminology.

BOEM proposes to revise paragraph (b) to include surety bonds “or other financial assurance” so that BOEM may pursue forfeiture of a surety bond or other financial assurance. The word “lessee” would also be replaced with “record title holder” to ensure that co-lessees are included.

BOEM proposes to revise paragraph (c)(1) to include “financial institution holding or providing your financial assurance” as one of the parties the Regional Director would notify of a determination to call for forfeiture because a bank or other financial institution may hold funds subject to forfeiture.

The proposed rule would revise paragraph (c)(1)(ii) to acknowledge limitations authorized by § 556.902(a)(3) by more precisely stating that the Regional Director will use an estimate of the cost of the corrective action needed to bring a lease into compliance when determining the amount to be forfeited, subject, in the case of a guarantee, to any limitation authorized by proposed § 556.902(a)(3).

BOEM proposes to replace existing paragraphs (c)(2)(ii) and (iii) with a new paragraph

(c)(2)(ii) that would specify that to avoid forfeiture by promising to take corrective action, any financial assurance provider would have to agree to, and demonstrate that it will complete the required corrective action to bring the relevant lease into compliance within the timeframe specified by the Regional Director, even if the cost of such compliance exceeds the limit of the financial assurance. The proposed changes make clear that existing paragraphs (c)(2)(ii) and (iii) apply to all forms of financial assurance, including the caveat that corrective action must be completed even if the cost of compliance exceeds the limit of the financial assurance.

BOEM proposes to revise existing paragraphs (d) and (e)(2) by replacing “leases” with “lease or grant” to extend the applicability of these provisions to include holders of RUE and ROW grants.

BOEM proposes to revise paragraph (f)(1) to include “grant” as well as lease. BOEM also proposes to revise paragraph (f)(2) to clarify that BOEM may recover additional costs from a third-party guarantor only to the extent covered by the guarantee. This would be consistent with the change made at § 556.902(a)(3) to allow the use of limited third-party guarantees.

This rulemaking would also reword paragraph (g) for clarity.

In some circumstances, predecessor lessees that have been notified about the failure of their successor organizations to fulfill their decommissioning obligations will initiate the requisite decommissioning activities. In these cases, predecessor lessees or grantees are likely to incur costs that could be funded from financial assurance posted with BOEM on behalf of the current lessee. Some of this financial assurance may be forfeited by the current lessee or by other successor lessees. BOEM proposes to add a paragraph (h) to make clear that BOEM may provide funding collected from forfeited financial assurance to predecessor lessees or grant holders or to third parties taking corrective actions on the lease or grant.

## *Part 590—Appeal Procedures*

### *Subpart A—Offshore Minerals Management Appeal Procedures*

#### *Section 590.4 How do I file an appeal?*

BOEM proposes to add paragraph (c) to specify that, while a demand for supplemental financial assurance may be appealed to the IBLA, a stay can only be granted if an appeal surety bond for an amount equal to the demand is posted. This is intended to mitigate the risk to the government that, after the appeal is decided, a company will be unable to perform its obligations because of its financial deterioration during pendency of the appeal.

### **Severability**

BOEM proposes to include in the final rule that, should any court hold unlawful and/or set aside portions of this rulemaking, the remaining portions are severable and therefore should not be remanded to the agency. The proposed rule contains three main components: (1) Streamlining requirements for supplemental financial assurance; (2) Establishing “P70” as the relevant estimate for the amount of any supplemental financial assurance, and (3) Making several, less significant changes to, among other things, right-of-use and easement and right-of-way grants and decommissioning accounts. See preamble sections IV.B through V.C.

These three components operate largely independent of each other: the first component considers whether a lessee is at risk of default based on the lessee’s credit rating or the proved reserves on the lease; the second component considers the appropriate requirements in light of that risk; and the third component addresses several longstanding and technical matters that do not bear directly on the first two components. Indeed, these three components are sufficiently distinct that their severability does not depend on the specifics of this proposed rule. For example, if, in the final rule, BOEM sets the appropriate level of supplemental financial assurance at a different P-value, that decision would remain severable from the threshold determination regarding *whether* to collect supplemental financial assurance and from the other separate technical changes proposed by this rule.

## **XI. Additional Comments Solicited by BOEM**

In addition to those comment requests stated above, BOEM also requests comments on the topics below:

- BOEM is considering the inclusion of offshore joint and several decommissioning liabilities (of the co-lessees that would otherwise have exempted the lessee from providing supplemental financial assurance) in the determination of a proxy credit rating when these liabilities are “disproportionately high” and may encumber that co-lessee’s ability to carry out future obligations. BOEM is requesting comments on the appropriate criteria to determine what constitutes “disproportionately high” offshore liabilities, for example, a ratio of decommissioning liabilities to the net worth of the co-lessee above X times, or other financially significant and reasonable criteria on how these liabilities should best be incorporated into the proxy credit rating that BOEM will derive.

- The use of End-of-Life (Years) in the evaluation of asset value as an alternative to using the decommissioning costs ratio. BOEM requests comments on the use of a minimum number of years of production remaining criterion to qualify for an exemption from supplemental financial assurance. Possibly, End-of-Life criteria could be an alternative to the 3:1 ratio of value of reserves to decommissioning costs.

- The consideration of bond issuance ratings, in addition to issuer credit ratings, in determining the financial risk posed by lessees and grant holders. BOEM also invites comments on determining an appropriate threshold for bond issuance ratings, such as general unsecured debt ratings.

- Should BOEM exclude third-party guarantors from the requirement of § 556.902(a)(3) that guarantees must “guarantee compliance with all obligations of all lessees, operating rights, owners and operators on the lease” in addition to allowing a third-party guarantee to be limited in amount?

## **XII. Procedural Matters**

### **A. Executive Order 12866: Regulatory Planning and Review, as amended by**

### **Executive Order 14094 – Modernizing Regulatory Review, and Executive Order**

### **13563: Improving Regulation and Regulatory Review**

Executive Order 12866, as amended by Executive Order 14094 provides that the Office of Information and Regulatory Affairs (OIRA) in OMB will review all significant rules. OIRA has reviewed this proposed rule and determined that it is a significant action under Executive Order 12866, as amended by Executive Order 14094 Sec 3 (f)(1). This rulemaking will result in an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.

Executive Order 13563 reaffirms the principles of Executive Order 12866, as amended by Executive Order 14094, while calling for improvements in the Nation's regulatory system to promote predictability and reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. BOEM has developed this proposed rule in a manner consistent with these requirements.

BOEM's proposed changes are estimated to increase the private cost to lessees in the form of bonding or other financial assurance premiums. BOEM has drafted an initial regulatory impact analysis (IRIA) detailing the estimated impacts of this proposed rule. The IRIA reflects both monetized and non-monetized impacts; the costs and benefits of the non-monetized impacts are discussed qualitatively in the document. BOEM's IRIA is available in the public docket for this rulemaking.

BOEM expects this proposed rule may increase the total amount of financial assurance, increasing the aggregate private cost to lessees of financial assurance premiums. The table below summarizes BOEM's estimate of the cost in financial assurance premiums paid by lessees over a 20-year time horizon if this proposed rule is finalized less the premiums associated with

BOEM's existing current financial assurance portfolio. Additional information on the estimated transfers, costs, and benefits can be found in the IRIA posted in the public docket for this proposed rule.

<b>Total Estimated Increase in Bonding Financial Assurance Premiums Associated with BOEM's Proposed Amendments (2022-2041, 2021\$ millions)</b>		
<b>2022-2041</b>	<b>Discounted at 3%</b>	<b>Discounted at 7%</b>
<b>Total Compliance Cost</b>	\$4,867	\$3,379
<b>Annualized Compliance Cost</b>	\$327.1	\$318.9

## **B. Regulatory Flexibility Act (RFA)**

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires agencies to analyze the economic impact of regulations when a significant economic impact on a substantial number of small entities is likely and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. BOEM has provided an initial regulatory flexibility analysis (IRFA), which assesses the impact of this proposed rule on small entities. The IRFA is available in the public docket for this rulemaking.

As defined by the Small Business Administration (SBA), a small entity is one that is "independently owned and operated and which is not dominant in its field of operation." What characterizes a small business varies from industry to industry. The proposed rule would affect OCS lessees and RUE grant holders and pipeline ROW grant holders on the OCS. The analysis shows that this includes roughly 536 companies with ownership interests in OCS leases and grants. Entities that would operate under this proposed rule are classified primarily under North American Industry Classification System (NAICS) codes 211120 (Crude Petroleum Extraction), 211130 (Natural Gas Extraction), and 486110 (Pipeline Transportation of Crude Oil and Natural Gas). For NAICS classifications 211120 and 211130, the SBA defines a small business as one with fewer than 1,250 employees; for NAICS code 486110, a business with fewer than 1,500

employees.

Based on these criteria, approximately 407 (76 percent) of the businesses operating on the OCS subject to this proposed rule are considered small; the remaining businesses are considered large entities. All of the operating businesses meeting the SBA “small business” classification are potentially impacted; therefore, BOEM expects that the proposed rule would affect a substantial number of small entities. Small and large oil and gas companies have different business models. Large oil and gas companies tend to focus their business efforts on new exploration and development projects. Such projects tend to be large in scale, low in frequency, and focused on deep water operations; as a result, the rate of their oil and gas reserve depletion is low. In contrast, most small oil and gas companies tend to focus on late-stage oil and gas production intended to maximize the residual output from established facilities; as a result, the rate of their oil and gas reserve depletion is high. For this reason, smaller companies tend to operate large numbers of old facilities, which are likely to require decommissioning sooner than newer facilities. Accordingly, the prospective decommissioning costs of small oil companies are likely to be high relative to their net tangible assets, making these companies disproportionately susceptible to any change in decommissioning costs and the associated costs of providing supplemental financial assurance. Because BOEM’s financial assurance program is intended to ensure that all current lessees meet their obligations, and thereby avoid the need for the taxpayer to assume these obligations in the event of default, any action taken by BOEM to ensure financial responsibility of lessees would necessarily significantly impact smaller companies.

BOEM estimated the annualized increase in private costs to lessees and allocated those costs to small and large entities based on their decommissioning liabilities. BOEM’s analysis concludes that the proposed regulatory changes could cause small companies to incur \$252.6 million (at a 7 percent discount rate) in annualized compliance costs. BOEM recognizes that there will be incremental cost burdens to most affected small entities. BOEM seeks specific comment and feedback from affected small entities on the costs associated with this rulemaking.

Additional information about these conclusions can be found in the IRFA for this proposed rule.

**Estimated Impact in Private Cost for Small Lessees  
(2021, \$millions)**

<b>2021-2041</b>	<b>Discounted at 3%</b>	<b>Discounted at 7%</b>
<b>Total Compliance Cost</b>	\$3,820	\$2,676
<b>Annualized Compliance Cost</b>	\$256.8	\$252.6

The proposed changes are designed to balance the risk of non-performance with the costs and disincentives to production that are associated with the requirement to provide supplemental financial assurance. The IRIA and the IRFA include three regulatory alternatives which were considered and not selected by BOEM. This section walks through the alternatives (which are discussed in more detail in the IRIA) and discusses how these alternatives impact small businesses and why they were not selected.

Regulatory Alternatives

There are three regulatory alternatives to the proposed action analyzed in the IRIA:

1. No Action Alternative: Continue the policies of partial implementation of NTL No. 2016-N01
2. More Stringent Regulatory Alternative: Full implementation of NTL No. 2016-N01
3. Less Stringent Regulatory Alternative: Lower Tier 1<sup>16</sup> cutoff to BB- and include a waiver for lessees with Tier 1 predecessor lessees

Under the no action alternative, BOEM would continue to partially implement NTL No. 2016-N01, which only requires high-risk, Tier 2 lessees (lessees with a credit rating below BB-)

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<sup>16</sup> The IRIA alternatives describe lessees as Tier 1 or Tier 2 depending on whether BOEM would require the lessee to provide supplemental financial assurance. Tier 1 lessees are considered low risk and would not be required to provide supplemental financial assurance, while Tier 2 lessees are considered high risk and would be required to do so.

to provide bonds or other financial assurance and only for their sole liability properties.<sup>17</sup> Only Tier 2 lessees that do not have another lessee in the chain of title would be required to provide supplemental financial assurance. This alternative differs from the proposed rule in that the proposed rule would change the Tier 2 demarcation to those lessees with ratings below BBB-. The proposed rule also would require supplemental financial assurance for Tier 2 lessees who do not have a Tier 1 (low risk) co-lessee, grant holder, or co-grant-holder regardless of the presence of any predecessor lessee or grantee, even a Tier 1 predecessor. This alternative is more fully described in the IRIA as the baseline.

Under the more stringent alternative, BOEM would fully implement NTL No. 2016-N01. The NTL included guidance on how BOEM would evaluate the five criteria for determining a company's ability to meet its OCS obligations for self-insurance, which are described in more detail in the IRIA. The result of NTL No. 2016-N01, as written, was that not even the subsidiaries of highly rated companies could provide sufficient financial assurance for the full amount of their OCS liabilities. More information on the more stringent alternative is included in the IRIA.

Under the less stringent alternative, BOEM analyzed an alternative that would maintain the baseline threshold demarcation between Tier 1 and Tier 2 companies at BB-. The less stringent option also would include the baseline's consideration of predecessor lessees but would require that at least one predecessor lessee be a Tier 1 company in order for the current lessee to avoid having to provide supplemental financial assurance. This alternative would require Tier 2 lessees who have Tier 2 predecessor lessees to provide supplemental financial assurance; they would not be required to do so under the baseline. As opposed to the proposed rule, lessees with

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<sup>17</sup> This does not fully reflect the current policy, and therefore is not literally a "no action" alternative: BOEM broadened the scope of its financial assurance requirement relative to a partial implementation of NTL No. 2016-N01 last year. See BOEM Expands Financial Assurance Efforts | Bureau of Ocean Energy Management, <https://www.boem.gov/newsroom/notes-stakeholders/boem-expands-financial-assurance-efforts>. However, there have been relatively few companies affected by the new policy to date, and it is too recent for this policy change to have had a discernible impact on financial assurance demands; therefore, the alternative used in the IRIA best estimates the baseline.

a BB-, BB, or BB+ rating would not be required to provide supplemental financial assurance under this alternative. Further, under this alternative, any Tier 2 lessee with a Tier 1 lessee in the chain of title would not be required to provide supplemental financial assurance, unlike under the proposed rule. BOEM fully outlines this alternative in the IRIA.

#### Discussion of Regulatory Alternatives

Under the no action alternative, the current level of financial risk would remain the same. However, BOEM reviewed NTL No. 2016-N01 after several recent bankruptcies and determined that changes were necessary to comprehensively identify, prioritize, and manage the health, safety, and environmental risks associated with industry activities on the OCS.

In its IRIA analysis, BOEM estimates that implementation of the more stringent alternative would significantly increase the compliance cost over the baseline and over the proposed rule. BOEM acknowledges that there could be some additional risk reduction by bonding a greater number of liabilities, but, given joint and several liability with multiple co-lessees and predecessor lessees, the relative risk reduction from this alternative would be very small. Although the more stringent option would reduce the risk that the U.S. Government might have to assume performance of the lessee's obligations, the \$647 million annualized compliance cost of this alternative could be a significant cost burden on the U.S. offshore oil and gas industry.

The less stringent alternative would differ in two problematic ways from the proposed action. First, the less stringent option would maintain the baseline demarcation between Tier 1 and Tier 2, which is lower than that of the proposed rule. This would not meaningfully help to mitigate default risk to the taxpayer on decommissioning liabilities. Second, the less stringent alternative would not require financial assurance should a Tier 1 predecessor lessee be in the chain of title. Although the less stringent alternative would result in lower bonding costs for industry and small businesses than the proposed rule, consideration of predecessor lessees and grantees encourages moral hazard by incentivizing current lessees to pass risk to predecessors

rather than proactively prepare for decommissioning and related obligations. Therefore, BOEM did not select this alternative. See the IRIA for more detailed information about the alternative bonding and risk profiles.

BOEM decided against the less stringent alternative. Instead, BOEM will require supplemental financial assurance from all financially weak lessees that lack either financially strong co-lessees or sufficiently valuable proved oil and gas reserves to attract a buyer if needed. Eschewing reliance on predecessor lessees ensures that financial responsibility for decommissioning rests with current lessees and encourages those lessees to financially prepare for decommissioning costs, rather than pass those expenses to predecessor lessees and possibly the taxpayer. BOEM finds the less stringent alternative would not adequately reduce default risk and would not require all lessees to fully internalize the cost of decommissioning. This alternative is also discussed in more detail below and in the IRIA.

As part of this less stringent alternative, potential adverse impacts to small businesses could be reduced if BOEM kept the Tier 2 threshold at BB- relative to the proposed rule, which increases such threshold to BBB- to match the investment grade standard. BOEM has determined that the use of an investment grade standard for waiving supplemental financial assurance is the most appropriate threshold because this approach minimizes credit default risk to the taxpayer without overburdening offshore companies with the cost of providing financial assurance in low credit risk scenarios.

BOEM finds that the less stringent alternative would slightly increase the likelihood that decommissioning costs would be borne by the taxpayer as lowering the floor of Tier 1 would expand the number of companies not subject to financial assurance to include those with higher 1-year default rates.

Although credit ratings are objective criteria that are intended to accurately reflect the risk of default and the potential that the Federal Government could be forced to undertake performance obligations of OCS lessees, BOEM recognizes that the proportion of small

companies adversely affected by the proposed rule would be higher than that of large companies. However, this disproportionate effect on small companies is not attributable to the proposed rule, but results from the need to ensure that decommissioning obligations are fulfilled.

This less stringent alternative also relies on predecessor lessees and grantees when determining if and how much supplemental financial assurance will be required, which BOEM's proposed rule does not. By not allowing reliance on predecessors to excuse supplemental financial assurance, BOEM requires that all lessees take into account the full cost of decommissioning as they will have provided financial assurance that prevents the need to turn to predecessor lessees. Any entity that owned a lease at any point in time is jointly and severally liable for the costs of decommissioning facilities on that lease during their tenure, along with the current and prior owners, until such time as the facility has been permanently decommissioned. Therefore, if the current lessee is unable or unwilling to decommission it at the end of its useful life, BSEE can order the prior lessee to complete the decommissioning obligations for facilities that existed on the lease at the time of ownership. If BOEM were to take into account the financial capacity of predecessor lessees in determining the amount of supplemental financial assurance required of a current owner, the financial burden on small companies would be substantially reduced compared to that resulting from the proposed rule, because a much smaller number of them would be required to post supplemental financial assurance. Given that the required amount of supplemental financial assurance relative to the net assets of such companies is often substantial, and considering that the premiums on the underlying bonds can be significant relative to the net income of such companies, taking into account predecessor lessee strength could substantially reduce the potential adverse impacts of requiring financial assurance from small business.

Though allowing the presence of a predecessor lessee or grantee to change financial assurance requirements would reduce the potential adverse impacts to small businesses, BOEM does not recommend waiving supplemental financial assurance from current lessees based only

on the existence of financially viable predecessor lessees. Financial consideration for the decommissioning liability has already been discounted from the asset purchase price paid by the current lessee. As a corollary, a lessee knows that BOEM may demand supplemental financial assurance from it to cover its obligations, including decommissioning obligations for which it shares liability with a predecessor lessee. Armed with this knowledge, all lessees can plan ahead and include the possible need to provide supplemental financial assurance in their business plans. Therefore, there is no need to insulate current lessees from supplemental financial assurance demands by relying on the financial ability of strong predecessor lessees. Along the same lines, allowing current lessees not to provide supplemental financial assurance based on a predecessor lessee's strength may incentivize current lessees to not consider decommissioning costs in their business decisions or to take risks they would not have otherwise taken if they had financial resources at risk in the event of non-performance. This "moral hazard" could distort the market for lease transfers by allowing a buyer and seller to conduct a transaction without calculating in end-of-life decommissioning cash outflows, the buyer relying on end-of-life bankruptcy instead of decommissioning, and may ultimately result in predecessor lessees and grantees having to perform decommissioning for which they had not planned.

While waiving supplemental financial assurance for companies having financially viable predecessor lessees and grantees would mitigate the impact the proposed rule on small businesses, BOEM has determined that this benefit would not be acceptable given that, under these circumstances, lessees may not always fully internalize the cost of their decommissioning obligations into their operations as they can rely on the predecessor lessee if needed and avoid having to pay financial assurance premiums. Additional moral hazard implications of implementing such a retroactive policy are described in more detail in the IRIA. Reliance on predecessor lessees would likely also cause them to require the buyer provide them financial assurance prior to selling their leases to new owners (which would also result in a cost for small businesses). For these reasons, BOEM has determined that any waiver of financial responsibility

based on business relationships should be limited to situations where the liable party voluntarily becomes a current co-lessee or co-grantee and therefore, knowingly assumes its liabilities.

### **C. Small Business Regulatory Enforcement Fairness Act**

This proposed rule would revise the financial assurance requirements for OCS lessees and grant holders and would require supplemental financial assurance where the risk is highest. BOEM's proposed changes would: 1) Modify the evaluation process for requiring additional security, 2) Simplify and strengthen the evaluation criteria, and 3) Remove restrictive provisions for third-party guarantees and decommissioning accounts. These proposed changes reflect an interest in relying on current lessees and grant holders to provide required financial assurance, aligning the evaluation criteria with banking and finance industry practices, providing greater flexibility for industry, and protecting taxpayers from exposure to the consequences of noncompliance with DOI regulations and OCS lease obligations, particularly the nonperformance of decommissioning obligations.

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because implementation of this rulemaking will have an annual effect on the economy of \$100 million or more.

For more information on the small business impacts, see the IRFA analysis and the discussion in section XII.B of this preamble. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman, and to the Regional Small Business Regulatory Fairness Board. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of BSEE or BOEM, call 1-888-REG-FAIR (1-888-734-3247).

### **D. Unfunded Mandates Reform Act (UMRA)**

This proposed rule does not impose an unfunded mandate on State, local, or tribal

governments of \$85 million per year.<sup>18</sup> This proposed rule does not have a significant or unique effect on State, local, or tribal governments. Moreover, the proposed rule would not have disproportionate budgetary effects on these governments.

BOEM has determined that this proposed rule would impose costs on the private sector of more than \$182 million in a single year. The IRIA includes information on the costs of the proposed rule and its alternatives. The UMRA (2 U.S.C. 1531 *et seq.*) requires BOEM to perform a cost-benefit assessment and to provide the legal authority for the rulemaking, a description of the macro-economic effects, and a summary of the State, local, or tribal government concerns. These items are described in more detail in the IRIA.

Because all of the anticipated private sector expenditures that may result from the proposed rule are analyzed in the IRIA and IRFA (*i.e.*, expenditures of the offshore oil and gas industry), these documents satisfy the UMRA requirement to estimate any disproportionate budgetary effects of the proposed rule on a particular segment of the private sector. As explained in the IRIA, the rulemaking is anticipated to have annualized net estimated compliance costs of \$319 million annually (7 percent discounting) but provides strengthened financial assurance to protect taxpayers from the costs of decommissioning offshore infrastructure. Under the proposed action, BOEM will evaluate the financial strength of OCS lessees and grant holders that could affect their ability to meet OCS obligations. The IRIA outlines both a less stringent and more stringent regulatory alternative. The more stringent option was not selected as the added benefits did not justify the increased compliance burden. BOEM's less stringent option includes a lower credit rating of BB- to be classified as low risk and allows predecessor lessee or grantee strength to be included in the financial assurance evaluation. This alternative was not selected as BB rated companies are considered speculative and below investment grade and relying on predecessor lessees and grantees introduces a moral hazard and does not require each current lessee to internalize its decommissioning obligations.

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<sup>18</sup> 2021 values are available here: <https://crsreports.congress.gov/product/pdf/R/R40957>.

**E. Executive Order 12630: Governmental Actions and Interference with  
Constitutionally Protected Property Rights**

This proposed rule does not affect a taking of private property or otherwise have takings implications under Executive Order 12630. Therefore, a takings implication assessment is not required.

**F. Executive Order 13132: Federalism**

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

**G. Executive Order 12988: Civil Justice Reform**

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this proposed rule:

- (1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**H. Executive Order 13175: Consultation and Coordination with Indian Tribal  
Governments**

Executive Order 13175 defines policies that have tribal implications as regulations, legislative comments or proposed legislation, and other policy statements or actions that will or may have a substantial direct effect on one or more Indian Tribes, or on the relationship between the Federal Government and one or more Indian Tribes.

BOEM strives to strengthen its government-to-government relationships with American Indian and Alaska Native Tribes through a commitment to consultation with those tribes and recognition of their right to self-governance and tribal sovereignty. The DOI's consultation policy for Tribal Nations, as described in Departmental Manual part 512 chapter 4, expands on

the above definition from E.O. 13175, and defines a Departmental Action with Tribal

Implications as -

“[a]ny regulation, rulemaking, policy, guidance, legislative proposal, plan, programmatic or operational activity, or grant or funding formula change that may have a substantial direct effect on a Tribe in matters including but not limited to: 1) Tribal cultural practices; lands; treaty rights; resources; ancestral lands; sacred sites, including sites that are submerged; and lands Tribes were removed from, or access to traditional areas of cultural or religious importance on Federally managed lands and waters; 2) the ability of a Tribe to govern or provide services to its members; 3) a Tribe’s formal relationship with the Department, be it nation-to-nation or beneficiary-to-trustee; or, 4) any action planned by a non-federal entity that involves funding, approval, or other final agency action provided by the Department, unless the Tribe is a party to the action.

Substantial direct effects on Tribes may include, but are not limited to, effects as shown in the Consensus-Seeking Model (Figure 1).” 512 DM 4.3.B. (November 30, 2022).

DOI’s procedures for consultation with Tribal Nations also provide that:

“Bureaus/Offices must invite Indian Tribes early in the planning process to consult whenever a Departmental plan or action with Tribal Implications arises. Bureaus/Offices should operate under the assumption that all actions with land or resource use or resource impacts may have Tribal implications and should extend consultation invitations accordingly.” 512 DM 5.4. (November 30, 2022).

Additionally, we are also respectful of our responsibilities for consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations. The DOI’s consultation policy defines a Departmental Action with ANCSA Corporation Implications as -

“[a]ny regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an ANCSA Corporation, including but not limited to: 1) any activity that may

substantially affect land, water, areas, or resources owned or selected by ANCSA Corporation; 2) any activity that may impact the ability of an ANCSA Corporation to participate in Departmental programs for which it qualifies; 3) any activity that may impact the ability of ANCSA shareholders to access and use ANCSA lands, water areas, or resources; 4) any activity that may impact the ability of Alaska Native people to maintain their traditional way of life and subsistence practices on ANCSA Corporation lands, waters, or adjacent federal lands; or, 5) any activity that may have a direct effect on the ability of an ANCSA Corporation to fulfil the purposes for which it was established under ANCSA.” 512 DM 6.3.C. (November 30, 2022).

DOI consultation procedures for ANSCA corporations also provides: “Bureaus and Offices should operate under the assumption that all actions with land or resource use or resource impacts may have ANCSA Corporation implications and should extend consultation invitations accordingly. When ANCSA Corporations indicate that there is substantial and direct effect of the Departmental Action with ANCSA Corporation Implications, the Department must engage in consultation.” 512 DM 7.4.A. (November 30, 2022).

This rulemaking proposes to modify the criteria for determining whether oil, gas, and/or sulfur lessees, RUE grant holders, and pipeline ROW grant holders may be required to provide bonds or other financial assurance, above the current regulatorily prescribed base bond amounts, to ensure compliance with their OCSLA obligations. It also proposes to remove certain restrictive provisions for third-party guarantees and decommissioning accounts and would add new criteria under which a bond, or third-party guarantee, that was provided as supplemental financial assurance, may be cancelled. Additionally, this proposed rule would clarify bonding requirements for RUEs serving Federal leases.

We have evaluated this proposed rule under the DOI’s consultation policy and under the criteria in Executive Order 13175, and have determined that, while this rulemaking will likely not cause any substantial direct effects on environmental or cultural resources, there may be

resource or economic impacts to one or more federally recognized Indian tribes or ANCSA Corporations as a result of this proposed rule.

In developing the 2020 Joint Notice of Proposed Rulemaking (85 FR 65924), BOEM determined that the rulemaking would have no substantial direct effects on environmental or cultural resources. However, BOEM determined there was the potential for economic impacts to one Tribal Nation and one ANCSA Corporation. In August 2018, BOEM invited consultation with this Tribal Nation and the ANCSA Corporation. BOEM consulted with the Tribal Nation in September 2018. The ANCSA Corporation did not request to consult. At that time, BOEM discussed the possible impacts from the 2020 proposal, as documented in the memorandum to the docket titled “2018 Outreach on the Financial Assurance Proposal.”

On March 31, 2023, BOEM sent letters to all Tribes and ANCSA Corporations to ensure they are aware of this preparation for a new proposed rulemaking, to answer any immediate questions they may have, and to invite formal consultation if they would like to consult. To date, only one Tribe has requested consultation, however we will formally consult with any Tribes or ANCSA corporations at any stage in this rulemaking as it advances if consultation is requested.

## **I. Paperwork Reduction Act (PRA)**

This proposed rule references existing information collections (ICs) previously approved by OMB and adds new IC requirements for BOEM regulations that require OMB review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, an information collection request for BOEM is being submitted to OMB for review and approval. The ICs related to this rulemaking concern the requirements under 30 CFR parts 550 and 556. BOEM may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB has reviewed and approved the information collection requirements associated with risk management and financial assurance for OCS lease and grant obligations and assigned the following OMB control numbers:

- 1010-0006 (BOEM), “Leasing of Sulfur or Oil and Gas in the Outer Continental Shelf (30 CFR parts 550, Subpart J; 556, Subparts A through I, and K; and 560, Subparts B and E) (expires 03/31/2026), and
- 1010-0114 (BOEM), “30 CFR 550, Subpart A, General, and Subpart K, Oil and Gas Production Requirements (expires 05/31/2026).

This proposed rule would modify collections of information under 30 CFR part 550, subparts A and J, and 30 CFR part 556, subpart I, concerning financial assurance requirements (such as bonding) for leases, pipeline ROW grants, and RUE grants. OMB has reviewed and approved the information collection requirements associated with financial assurance regulations for leases (30 CFR 556.900 through 907), pipeline ROW grants (30 CFR 550.1011), and RUE grants (30 CFR 550.160 and 550.166).

BOEM estimates that the number of information collection burden hours for the proposed rule overall are close to the same as for the existing regulatory framework. If this proposed rule becomes final and effective, the new and changed provisions would increase the overall annual burden hours for OMB Control Number 1010-0006 by 77 hours (totaling 19,131 annual burden hours) and 268 responses (totaling 10,575 responses) as justified below. The changed provisions for OMB Control Number 1010-0114 would add new and revise requirements in 30 CFR part 550, subpart A, but would not impact the overall burden hours for this control number because the burdens for these provisions are counted under OMB Control Number 1010-0006. However, the regulatory descriptions of new and modified requirements would be extensive enough to require an update of the OMB control number.

When needed, BOEM would submit future burden changes (either increases or decreases) of the OMB control numbers with reasoning to OMB for review and approval. Every 3 years, BOEM would also review the burden numbers for changes, seek public comment, and submit any request for changes to OMB for approval.

*Title of Collection:* 30 CFR Part 550, “Oil and Gas and Sulfur Operations in the Outer

Continental Shelf,” and 30 CFR Part 556, “Leasing of Sulfur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf.”

*OMB Control Number:* 1010-0006 and 1010-0114.

*Form Number:* None.

*Type of Review:* Revision of currently approved collections.

*Respondents/Affected Public:* Federal OCS oil, gas, and sulfur operators and lessees, and RUE grant and pipeline ROW grant holders.

*Total Estimated Number of Annual Responses:* 10,575 responses for 1010-0006, and 5,302 responses for 1010-0114.

*Total Estimated Number of Annual Burden Hours:* 19,131 hours for 1010-0006, and 18,323 hours for 1010-0114.

*Respondent’s Obligation:* Responses to these collections of information are mandatory or are required to obtain or retain a benefit.

*Frequency of Collection:* The frequency of response varies but is primarily on the occasion or as per the requirement.

*Total Estimated Annual Non-hour Burden Cost:* No additional non-hour costs.

The following is a brief explanation of how the proposed regulatory changes would affect the various subparts’ hour and non-hour cost burdens for OMB Control Number 1010-0114:

#### Right-of-Use and Easement

BOEM’s existing regulations concerning RUE grants for an OCS lessee and a State lessee are found in 30 CFR 550.160 through 550.166. The burdens related to 30 CFR 550.160 and 550.166 are identified in OMB Control Number 1010-0114 but accounted for in OMB Control Number 1010-0006.

Section 550.160 provides that an applicant for a RUE that serves an OCS lease must meet bonding requirements, but the regulation does not prescribe a base surety bond amount. The proposed rule would replace this requirement with a cross-reference to the specific criteria

governing financial assurance demands in proposed § 550.166. Therefore, BOEM is proposing to establish a Federal RUE base financial assurance requirement matching the existing base surety bond requirement for State RUEs. The annual burden hour likely would not change since RUEs that serve OCS leases are currently already meeting bonding requirements under BOEM’s agreement-specific conditions of approval. The proposed regulations will be more specific and clarify the meaning of “meeting bonding requirements.”

BOEM is proposing to establish a \$500,000 area-wide RUE financial assurance requirement for any RUE-holder that owns one or more RUEs, regardless of whether they serve a State or Federal lease. BOEM is also proposing to allow any lessee that has posted an area-wide lease surety bond to modify that lease surety bond to also cover any RUE(s) held by the same entity.

BOEM is also proposing to revise the RUE regulations to clarify that any RUE grant holder, whether the RUE serves a State or Federal lease, may be required to provide supplemental financial assurance for the RUE if the grant holders do not meet the credit rating or proxy credit rating criteria. The existing regulations authorized demands for supplemental financial assurance but specified no criteria. The annual burden hour would not change based on these clarifications.

The following is the revised burden table and a brief explanation of how the proposed regulatory changes would affect the various subparts’ hour and non-hour cost burdens for OMB Control Number 1010-0006:

### Burden Table

*[Italics show expansion of existing requirements; bold indicates new requirements; regular font shows current requirements. Where applicable, updated estimates from the current collection are being used instead of those in the proposed rulemaking.]*

<b>30 CFR Part 550 Subpart J</b>	<b>Reporting Requirement*</b>	<b>Hour Burden</b>	<b>Average No. of Annual Responses</b>	<b>Annual Burden Hours</b>
<i>1011(a)</i>	Provide <i>area-wide financial assurance</i> (form BOEM-2030) and if required,	GOM	52	13

	supplemental financial assurance, and required information.	0.25		
		Pacific 3.5	3	11
1011(d)	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of financial assurance, request reduction in amount of supplemental bond required on BOEM-approved forms, or requested phased financial assurance. Monitor and submit required information.	Burden included in 30 CFR 556.901(d).		
30 CFR 550, Subpart J, TOTAL			55 Responses	24 Hours
30 CFR Part 556 and NTLs	Reporting Requirement*	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Non-Hour Cost Burdens		
Subpart A				
104(b)	Submit confidentiality agreement.	0.25	500	125
106	Cost recovery/service fees; confirmation receipt.	Cost recovery/service fees and associated documentation are covered under individual reqts. throughout part.		0
107	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the Federal Register in accordance with § 560.500.	Burden covered in § 560.500.		0
107	File seals, documents, statements, signatures, etc., to establish legal status of all future submissions (paper and/or electronic).	10 min.	400	67
Subtotal			900	192
Subpart B				
201-204	Submit nominations, suggestions, comments, and information in response to Request for Information/Comments, draft and/or proposed 5-year leasing program, etc., including information from States/local governments, Federal agencies, industry, and others.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
201-204	Submit nominations & specific information requested in draft proposed 5-year leasing program, from States/local governments.	4	69	276
Subtotal			69	276
Subpart C				
301; 302	Submit response & specific information requested in Requests for Industry Interest and Calls for Information and Nominations, etc., on areas proposed for leasing; including information from States/local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4)		0
302(d)	Request summary of interest (non-proprietary information) for Calls for Information/Requests for Interest, etc.	1	5	5
305; 306	States or local governments submit comments, recommendations, other responses on size, timing, or location of proposed lease sale. Request extension; enter agreement.	4	25	100
Subtotal			30	105
Subpart D				
400-402; 405	Establish file for qualification; submit evidence/certification for lessee/bidder qualifications. Provide updates; obtain BOEM approval & qualification number.	2	107	214
403(c)	Request hearing on disqualification.	Requirement not considered IC under 5 CFR 1320.3(h)(8).		0
403; 404	Notify BOEM if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment and suspension requirements; request exception; enter transaction.	1.5	50	75
405	Notify BOEM of all mergers, name changes, or change of business.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
Subtotal			157	289
Subpart E				
500; 501	Submit bids, deposits, and required information, including GDIS & maps; in manner specified. Make data available to BOEM.	5	2,000	10,000

500(e); 517	Request reconsideration of bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
501(e)	Apply for reimbursement.	Burden covered in 1010-0048, 30 CFR part 551.		0
511(b); 517	Submit appeal due to restricted joint bidders list; appeal bid decision.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
513; 514	File statement and detailed report of production. Make documents available to BOEM.	2	100	200
515	Request exemption from bidding restrictions; submit appropriate information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
516	Notify BOEM of tie bid decision; file agreement on determination of lessee.	3.5	2	7
520; 521; 600(c)	Execute lease (includes submission of evidence of authorized agent/completion and request effective date of lease); submit required data and rental.	1	852	852
520(b)	Provide acceptable bond for payment of a deferred bonus.	0.25	1	1
Subtotal			2,955	11,060
Subparts F, G, H				
Subpart F, G, H	References to requests of approval for various operations or submit plans or applications. Burden included with other approved collections for BOEM 30 CFR part 550 (Subpart A 1010-0114; Subpart B 1010-0151) and for BSEE 30 CFR part 250 (Subpart A 1014-0022; Subpart D 1014-0018).			0
701(c); 716(b); 801(b); 810(b)	Submit new designation of operator (BOEM-1123).	Burden covered in 1010-0114.		0
700-716	File application and required information for assignment/transfer of record title/lease interest (form BOEM-0150; form is 30 min.) (includes sell, sublease, sever, exchange, transfer); request effective date/confidentiality; provide notifications.	1	1,414	1,414
		\$198 fee x 1,414 forms = \$279,972		
800-810	File application and required information for assignment/transfer of operating interest (Form BOEM-0151) (includes sale, sublease, segregation exchange, severance, transfer); request effective date; provide notifications.	1	421	421
		\$198 fee x 421 forms = \$83,358		
715(a); 808(a)	File required instruments creating or transferring working interests, etc., for record purposes.	1	2,369	2,369
		\$29 fee x 2,369 filings = \$68,701		
715(b); 808(b)	Submit “non-required” documents, for record purposes that respondents want BOEM to file with the lease document. ( <i>Accepted on behalf of lessees as a service; BOEM does not require nor need them.</i> )	\$29 fee x 11,518 filings = \$334,022		
Subtotal			4,204	4,204
			\$766,053	
Subpart I				
900(a)-(e); 901; 902; 903(a); 905	Submit OCS Mineral Lessee’s and Operator’s Bond (Form BOEM-2028) <i>and, if required, provide supplemental financial assurance</i> ; execute bond.	0.33	405	135
900(c), (d), (f), (g); 901(c), (h), 901(d), (f); 902; 904	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of <i>financial assurance</i> , request reduction in amount of supplemental bond required on BOEM-approved forms, <i>or requested phased financial assurance</i> . Monitor and submit required information.	3.5	160	560
900(e); 901; 902; 903(a)	Submit OCS Mineral Lessee’s and Operator’s Supplemental Plugging & Abandonment Bond (Form BOEM-2028A); execute bond.	0.25	141	35
900(f), (g), (i)	Submit authority for Regional Director to sell Treasury or alternate type of securities <i>or financial assurance</i> .	2	12	24
901	Submit EP, DPP, DOCDs.	IC burden covered in 1010-0151, 30 CFR part 550, subpart B.		0
901(g)	Submit oral/written comment on adjusted <i>financial assurance</i> amount and information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
902 (g), (h) NEW	Request informal resolution or file an appeal of supplemental financial assurance demand.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0

903 (a), (b); 905 (c)	Notify BOEM of any lapse in <i>financial assurance</i> coverage/action filed alleging lessee, surety, guarantor or financial institution is insolvent or bankrupt or had its charter or license suspended or revoked.	3	4	12
904	<i>Establish decommissioning account proportional to estimated decommissioning obligation.</i>	12	2	24
905	Provide third-party guarantee, agreement, financial and required information, related notices, reports, and annual update; notify BOEM if guarantor becomes unqualified.	19	46	874
905(d); 906	Provide notice of and request approval to terminate period of liability, cancel <i>financial assurance</i> ; provide required information.	0.5	378	189
907(c)(2)	Provide information to demonstrate lease will be brought into compliance.	16	5	80
<b>Subtotal</b>			1,157	1,933
<b>Subpart K</b>				
1101	Request relinquishment (form BOEM-0152) of lease; submit required information.	1	247	247
1102	Request additional time to bring lease into compliance.	1	1	1
1102(c)	Comment on cancellation.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
<b>Subtotal</b>			248	248
<b>30 CFR Part 556 TOTAL</b>			9,720 Responses	18,307 Hours
			\$766,053 Non-Hour Cost Burdens	
<b>30 CFR Part 560</b>	<b>Reporting Requirement*</b>	<b>Hour Burden</b>	<b>Average No. of Annual Responses</b>	<b>Annual Burden Hours</b>
560.224(a)	Request BOEM to reconsider field assignment of a lease.	Requirement not considered IC under 5 CFR 1320.3(h)(9)		0
560.500	Submit required documentation electronically through BOEM-approved system; comply with filing specifications, as directed by notice in the <i>Federal Register</i> (e.g., financial assurance info.).	1	800	800
<b>30 CFR Part 560 TOTAL</b>			<b>800 Responses</b>	<b>800 Hours</b>
<b>TOTAL REPORTING FOR COLLECTION</b>			<b>10,575 Responses</b>	<b>19,131 Hours</b>
			<b>\$766,053 Non-Hour Cost Burdens</b>	

### Pipelines and Pipeline Right-of-Way Grants

Proposed § 550.1011(d) relates to BOEM's determination of whether supplemental financial assurance is necessary to ensure compliance with the obligations under a pipeline ROW grant. This determination would be based on whether pipeline ROW grant holders have the ability to carry out present and future obligations. The criteria proposed for the financial determination include an issuer credit rating or a proxy credit rating. The issuer credit rating and the audited financial information on which BOEM determines a proxy credit rating already exist. The burden of determining a proxy credit rating falls on BOEM. The annual burdens placed on the grant holder would be minimal (providing to BOEM information the grant holder already

has) and would be included in the burden estimates for 30 CFR 556.901(d).

Proposed § 550.1011(d)(2) provides that BOEM would consider the issuer credit rating or proxy credit rating of a co-grant holder, because they are liable for accrued decommissioning obligations for facilities and pipelines on their ROW. The burden for determining credit rating falls mostly on BOEM. The annual burdens placed on the grant holder would be minimal (providing to BOEM information the grant holder already has) and would be included in the burden estimates for 30 CFR 556.901(d).

#### Bond or Other Financial Assurance Requirements for Leases

Proposed § 556.900(a)(4) proposes to add that supplemental financial assurance required by the Regional Director must be provided before a new lease is issued or an assignment of a lease is approved. The burden increase for this requirement would be included in OMB Control Number 1010-0006. Supplemental financial assurance required by this provision would likely not significantly impact the burdens due to low occurrence, but BOEM would account for the change in the burden table.

#### Base Financial Assurance and Supplemental Financial Assurance

Proposed § 556.901(d) relates to BOEM's determination of whether supplemental financial assurance is necessary to ensure compliance with the obligations under a lease. New proposed § 556.901(d)(1) would base this determination on an issuer credit rating or a proxy credit rating determined by BOEM based on audited financial information.

New § 556.901(d)(2) provides that BOEM would consider the issuer credit rating or proxy credit rating of a co-lessee, and new § 556.901(d)(3) provides that BOEM would consider the net present value of proved oil and gas reserves on the lease. Lessees' submission of information on proved reserves would account for additional annual burden hours. The lessee would not need to submit proved reserve information if supplemental financial assurance is not required based on its issuer credit rating or proxy credit rating, or those of its co-lessees.

The existing OMB-approved hour burden for each respondent to prepare and submit the

information for the existing evaluation criteria requirements is 3.5 hours. In this proposed rule, the revision of the evaluation criteria would likely result in requiring less time for the respondents to prepare and submit the information, particularly for issuer credit rating. If companies choose to demonstrate that the net present value of proved oil and gas reserves on the lease exceeds three times the decommissioning cost associated with production of those reserve, then the time necessary for companies to prepare and submit information on the proved oil and gas reserves would likely be greater than 3.5 hours. Therefore, BOEM proposes to retain the average 3.5-hour burden to reflect the decrease in time required to prepare and submit issuer credit ratings and audited financials and the increase in time required for preparing and submitting information on proved reserves. When the final rule becomes effective, the related burden hours for all respondents (lessee, co-lessee, grant holder, and co-grant holder) would be included in OMB Control Number 1010-0006.

The OMB-approved number of respondents who currently submit financial information under the existing provision is 166 respondents. Recently, BOEM has seen the number of leases decrease in the Gulf of Mexico. BOEM estimates the new number of respondents would be between 150 and 160 respondents. For this request, BOEM will use the higher number of 160 respondents (-6 respondents). This number will be reviewed during the next IC renewal process. When the final rule becomes effective, BOEM will include the new number of respondents in OMB Control Number 1010-0006.

The existing OMB-approved annual burden hours for § 556.901 related to demonstrating financial worth/ability to carry out present and future financial obligations is 581 hours (166 respondents x 3.5 hours). With the changes provided in the proposed rule and described above, BOEM estimates that the annual hour burden would decrease by approximately 21 annual burden hours, and total annual burden hours would be 560 hours (160 respondents x 3.5 hours). This decrease in annual burden hours would be reflected in OMB Control Number 1010-0006 when the final rule becomes effective.

BOEM proposes to add paragraph (h) to § 556.901 to establish the limited opportunity to provide the required supplemental financial assurance demanded in three installments during the first 3 years after the effective date of this regulation. This provision would establish the timing and proportions of phased supplemental financial assurance that would be required in each installment. The lessee would have the option to submit the supplemental financial assurance once or in installments. If the lessee chooses to provide supplemental financial assurance in installments, the number of submissions of supplemental financial assurance would likely increase, but only for the first 3 years after the effective date of this regulation. OMB has currently approved 45 annual burden hours for supplemental financial assurance submissions (135 submissions which take 20 minutes each to submit). BOEM estimates the burden hours for the proposed installment submissions provision to be 135 annual burden hours (405 submissions x 20 minutes), which is an increase of 90 hours over existing OMB approval.

#### General Requirements for Bonds and Other Financial Assurance

The scope of proposed § 556.902(a) would include “grant holder” and financial assurance posted under the requirements of 30 CFR part 550. This change would clarify that the same general requirements for financial assurance provided by lessees, operating rights owners, or operators also apply to financial assurance provided by RUE and pipeline ROW grant holders. BOEM proposes to keep the burdens the same as the existing OMB burdens.

#### Decommissioning Accounts

Proposed revisions to § 556.904 would allow the Regional Director to authorize a RUE grant holder and a pipeline ROW grant holder, as well as a lessee, to establish a decommissioning account as supplemental financial assurance required under § 556.901(d), or 550.166(b) or 550.1011(d). Because this change represents a new opportunity for grant holders, there are no existing burdens related to this provision under the current OMB approval. BOEM is capturing the requirement to establish decommissioning accounts in the burden table. BOEM estimates 24 annual burden hours for grant holders and/or lessees to establish their

decommissioning account.

A new provision is proposed under § 556.904(a)(3), which would require immediate submission of a surety bond or other financial assurance in the amount equal to the remaining unsecured portion of the supplemental financial assurance demand if the initial payment or any scheduled payment into the decommissioning account is not timely made. In the context of paperwork-burden, this provision replaces the existing provision that requires submission of binding instructions. The annual burden hours will remain the same but will shift to the proposed requirement and would be reflected in OMB Control Number 1010-0006.

### Third-party Guarantees

Proposed § 556.905(a) relates to the guarantor's ability to carry out present and future obligations. Proposed § 556.905(a)(2) would require the guarantor to submit a third-party guarantee agreement. Paragraph (d) would provide that the terms which the existing regulation requires for indemnity agreements must be included in a third-party guarantee agreement. This change is to avoid any inference that the government must incur the expenses of decommissioning before being indemnified by the guarantor. It is a change of the name of the agreement and does not change the associated burden.

Proposed § 556.905(c)(2) would eliminate the requirement that a lessee must cease production until supplemental financial assurance coverage requirements are met when a guarantor becomes unqualified. The regulatory provision would be replaced with a requirement to immediately submit and maintain a substitute surety bond or other financial assurance. Both the existing and proposed provisions require the lessee to provide replacement surety bond coverage; however, BOEM's current OMB Control Number 1010-0006 does not quantify the burdens. Therefore, BOEM would add approximately 8 annual burden hours to OMB Control Number 1010-0006 for any lessee whose guarantor became unqualified.

Proposed § 556.905(b) would remove the requirement that a guarantee ensure compliance with all lessees' or grant holders' obligations and the obligations of all operators on the lease or

grant. This revision would allow a third-party guarantor to limit the obligations covered by the third-party guarantee. In some situations, this change could result in additional paperwork burden due to additional surety bonds or other financial assurance that must be provided to BOEM to cover obligations previously covered by a third-party guarantee. BOEM estimates the number of additional financial assurance demands resulting from this revision to be low and the annual burdens would be included in the existing burden estimates for OMB Control Number 1010-0006, and revised in future IC requests, if needed.

Proposed § 556.905 would replace the indemnity agreement with a third-party guarantee agreement with comparable provisions. This change would not impact annual burden hours. Proposed § 556.905(e) would provide that a lessee or grant holder and the guarantor under a third-party guarantee may request BOEM to cancel a third-party guarantee. BOEM would cancel a third-party guarantee under the same terms and conditions provided for cancellation of additional surety bonds in proposed § 556.906(d)(2). The current OMB-approved burden under §§ 556.905(d) and 556.906 is 189 annual burden hours. BOEM proposes to keep the burdens the same as the current OMB approved burdens at 189 annual burden hours.

#### Termination of the Period of Liability and Cancellation of Financial Assurance

Proposed § 556.906(d)(2) would be revised to add additional circumstances when BOEM may cancel supplemental financial assurance. Proposed § 556.906(d)(2) would require a cancellation request from the lessee or grant holder, or the surety, based on assertions that one of the stated circumstances is present. BOEM already receives these types of requests and has approved the requests, where warranted, as a departure from the regulations. These burdens are already counted in the existing OMB burden estimate for OMB Control Number 1010-0006. If this proposed rule becomes effective and OMB approves the information, BOEM would revise the existing OMB control numbers to reflect the changes. The IC does not include questions of a sensitive nature. BOEM will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI implementing regulations (43 CFR part 2), 30 CFR

556.104, *Information collection and proprietary information*, and 30 CFR 550.197, *Data and information to be made available to the public or for limited inspection*.

The PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component; and (2) annual operation, maintenance, and purchase of service component. Your estimates should consider the cost to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Is the proposed information collection necessary or useful for BOEM to properly perform its functions?
- (2) Are the estimated annual burden hour increases and decreases resulting from the proposed rule reasonable?
- (3) Is the estimated annual non-hour cost burden resulting from this information collection reasonable?
- (4) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?
- (5) Is there a way to minimize the information collection burden on those who must

respond, such as by using appropriate automated digital, electronic, mechanical, or other forms of information technology?

Send your comments and suggestions on this information collection by the date indicated in the DATES section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or via the [www.reginfo.gov](http://www.reginfo.gov) portal (online). You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. Please provide a copy of your comments to the BOEM Information Collection Clearance Officer (see the ADDRESSES section). You may contact Anna Atkinson, BOEM Information Collection Clearance Officer at (703) 787-1025 with any questions. Please reference Risk Management, Financial Assurance and Loss Prevention (OMB Control No. 1010-0006), in your comments.

#### **J. National Environmental Policy Act (NEPA)**

A detailed environmental analysis under NEPA is not required because the proposed rule is covered by a categorical exclusion (see 43 CFR 46.205). This proposed rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion in that this proposed rule is “of an administrative, financial, legal, technical, or procedural nature.” We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### **K. Data Quality Act**

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154).

#### **L. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use**

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for “significant energy actions.” This should include a detailed statement of any adverse effects on energy supply, distribution, or use (including a shortfall in

supply, price increases, and increased use of foreign supplies) expected to result from the action and a discussion of reasonable alternatives and their effects.

This action, which is a significant regulatory action under Executive Order 12866,<sup>19</sup> is likely to have a significant effect on the supply, distribution, or use of energy. BOEM has prepared a Statement of Energy Effects for this action. BOEM estimates that stronger supplemental financial assurance requirements will increase compliance costs for non-investment grade companies operating on the OCS by approximately \$319 million annually (7 percent discounting). Pursuant to OMB's memorandum M-01-27,<sup>20</sup> BOEM recognizes that this action may "adversely affect[] in a material way the productivity, competition, or prices in the energy sector." By increasing industry compliance costs, the regulation could adversely make the U.S. offshore oil and gas sector less attractive than regions with lower operating costs. Additionally, increased costs may depress the value of offshore assets or cause continuing production to become uneconomic sooner, leading to shorter-than-otherwise useful life and potentially a loss of production. For additional discussion on the energy effects and regulatory alternatives, please refer to the IRIA for this proposal.

### **M. Clarity of This Regulation**

BOEM is required by Executive Order 12866, Executive Order 12988, and by the Presidential memorandum of June 1, 1998, to write all rules in plain language. This means that each rule BOEM publishes must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;

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<sup>19</sup> According to E.O. 31211, "For purposes of this order: (a) "Regulation" and "rule" have the same meaning as they do in Executive Order 12866 or any successor order. (b) "Significant energy action" means any action by an agency (normally published in the *Federal Register*) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order,"

<sup>20</sup> <https://www.whitehouse.gov/wp-content/uploads/2017/11/2001-M-01-27-Guidance-for-Implementing-E.O.-13211.pdf>

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that BOEM has not met these requirements, send comments by one of the methods listed in the **ADDRESSES** section. To better help BOEM revise the proposed rule, your comments should be as specific as possible. For example, you should specify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, and the sections where you feel lists or tables would be useful.

## **List of Subjects**

### **30 CFR Part 550**

Administrative practice and procedure, Continental shelf, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Public lands—rights-of-way, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

### **30 CFR Part 556**

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Mineral resources, Oil and gas exploration, Outer continental shelf, Public lands, Reporting and recordkeeping requirements, Rights-of-way.

### **30 CFR Part 590**

Administrative practice and procedure.

**Laura Daniel-Davis,**

*Principal Deputy Assistant Secretary,*

*Land and Minerals Management.*

For the reasons stated in the preamble, the Bureau of Ocean Energy Management (BOEM) proposes to amend 30 CFR chapter V as follows:

**PART 550—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334

2. Revise the heading to part 550 to read as set forth above.

**Subpart A—General**

3. Amend § 550.101 by revising the introductory paragraph to read as follows:

**§ 550.101 Authority and applicability.**

The Secretary of the Interior (Secretary) authorized the Bureau of Ocean Energy Management (BOEM) to regulate oil, gas, and sulfur exploration, development, and production operations on the Outer Continental Shelf (OCS). Under the Secretary’s authority, the Director requires that all operations:

\* \* \* \* \*

4. Amend § 550.102 by revising paragraphs (a) and (b)(16) to read as follows:

**§ 550.102 What does this part do?**

(a) This part contains the regulations of the BOEM Offshore program that govern oil, gas, and sulfur exploration, development, and production operations on the OCS. When you conduct operations on the OCS, you must submit requests, applications, and notices, or provide supplemental information for BOEM approval.

(b) \* \* \*

**Table-Where To Find Information for Conducting Operations**

For information about	Refer to
* * * * *	
(16) Sulfur operations	30 CFR part 250, subpart P.

5. Amend § 550.105 by:

- a. Adding the definition “Assign” in alphabetical order;
- b. Revising the definitions “Criteria air pollutant” and “Development geological and geophysical (G&G) activities”;
- c. Removing the definition “Easement”;
- d. Revising the definitions “Exploration” and “Facility”;
- e. Adding the definition “Financial assurance” in alphabetical order;
- d. Revising the definition of “Geological and geophysical (G&G) exploration”;
- e. Adding the definitions of “Investment grade credit rating” and “Issuer credit rating” in alphabetical order;
- f. Revising the definitions of “Minerals”, “Nonattainment area”, “Pipelines”, and “Production areas”;
- g. Removing the definition of “Right-of-use”;
- h. Adding the definition of “Right-of-Use and Easement (RUE)” in alphabetical order;
- i. Removing the definition of “Right-of-way pipelines”;
- j. Adding the definition of “Right-of-way (ROW) pipelines”;
- k. Adding the definition of “Transfer” in alphabetical order;
- l. Revising the definition of “You”;
- m. Adding the definition of “Waste of oil, gas, or sulfur” in alphabetical order; and
- n. Removing the definition of “Waste of oil, gas, or sulphur.

The revisions and additions read as follows:

**§ 550.105 Definitions.**

*Assign* means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, “assign” is synonymous with “transfer” and the two terms are used interchangeably.

\* \* \* \* \*

*Criteria air pollutant* means any air pollutant for which the United States Environmental Protection Agency (USEPA) has established a primary or secondary National Ambient Air Quality Standard (NAAQS) pursuant to section 109 of the Clean Air Act.

\* \* \* \* \*

*Development geological and geophysical (G&G) activities* means those G&G and related data-gathering activities on your lease or unit that you conduct following discovery of oil, gas, or sulfur in paying quantities to detect or imply the presence of oil, gas, or sulfur in commercial quantities.

\* \* \* \* \*

*Exploration* means the commercial search for oil, gas, or sulfur. Activities classified as exploration include but are not limited to:

(1) Geophysical and geological (G&G) surveys using magnetic, gravity, seismic reflection, seismic refraction, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulfur; and

(2) Any drilling conducted for the purpose of searching for commercial quantities of oil, gas, and sulfur, including the drilling of any additional well needed to delineate any reservoir to enable the lessee to decide whether to proceed with development and production.

*Facility*, as used in § 550.303, means all installations or devices permanently or temporarily attached to the seabed. They include mobile offshore drilling units (MODUs), even while operating in the “tender assist” mode (*i.e.*, with skid-off drilling units) or other vessels engaged in drilling or downhole operations. They are used for exploration, development, and production activities for oil, gas, or sulfur and emit or have the potential to emit any air pollutant

from one or more sources. They include all floating production systems (FPSs), including column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

*Financial assurance* means a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations and under the terms of a lease, a RUE grant, or a pipeline ROW grant.

\* \* \* \* \*

*Geological and geophysical (G&G) explorations* means those G&G surveys on your lease or unit that use seismic reflection, seismic refraction, magnetic, gravity, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulfur in commercial quantities.

\* \* \* \* \*

*Investment grade credit rating* means an issuer credit rating of BBB- or higher, or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization (NRSRO) as that term defined by the United States Securities and Exchange Commission (SEC).

*Issuer credit rating* means a credit rating assigned to an issuer of corporate debt by Standard and Poor's (S&P) Ratings Services (or any of its subsidiaries), by Moody's Investors Service Incorporated (or any of its subsidiaries) or by another NRSRO, as that term is defined by the United States SEC.

\* \* \* \* \*

*Minerals* include oil, gas, sulfur, geopressured-geothermal and associated resources, and all other minerals that are authorized by an Act of Congress to be produced.

\* \* \* \* \*

*Nonattainment area* means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of the USEPA to be reliable) to exceed any primary or secondary NAAQS established by the USEPA.

\* \* \* \* \*

*Pipelines* are the piping, risers, and appurtenances installed for transporting oil, gas, sulfur, and produced waters.

\* \* \* \* \*

*Production areas* are those areas where flammable petroleum gas, volatile liquids or sulfur are produced, processed (*e.g.*, compressed), stored, transferred (*e.g.*, pumped), or otherwise handled before entering the transportation process.

\* \* \* \* \*

*Right-of-Use and Easement (RUE)* means a right to use a portion of the seabed, at an OCS site other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, or other devices to support the exploration, development, or production of oil, gas, or sulfur resources from an OCS lease or a lease on State submerged lands adjacent to or accessible from the OCS.

*Right-of-way (ROW) pipelines* are those pipelines that are contained within:

- (1) The boundaries of a single lease or unit, but are not owned and operated by a lessee or operator of that lease or unit;
- (2) The boundaries of contiguous (not cornering) leases that do not have a common lessee or operator;

(3) The boundaries of contiguous (not cornering) leases that have a common lessee or operator but are not owned and operated by that common lessee or operator; or

(4) An unleased block(s).

\* \* \* \* \*

*Transfer* means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, “transfer” is synonymous with “assign” and the two terms are used interchangeably.

\* \* \* \* \*

*You*, depending on the context of the regulations, means a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the above.

*Waste of oil, gas, or sulfur* means:

(1) The physical waste of oil, gas, or sulfur;

(2) The inefficient, excessive, or improper use, or the unnecessary dissipation of reservoir energy;

(3) The locating, spacing, drilling, equipping, operating, or producing of any oil, gas, or sulfur well(s) in a manner that causes or tends to cause a reduction in the quantity of oil, gas, or sulfur ultimately recoverable under prudent and proper operations or that causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; or

(4) The inefficient storage of oil.

\* \* \* \* \*

6. Amend § 550.160 by

a. Revising the section heading;

b. Revising the introductory text; and

c. Revising paragraphs (a) introductory text, (b), and (c).

The revisions read as follows:

**§ 550.160 When will BOEM grant me a right-of-use and easement (RUE), and what requirements must I meet?**

BOEM may grant you a RUE on leased or unleased lands on the OCS, if you meet these requirements:

(a) You must require the RUE to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, or other devices at an OCS site other than an OCS lease you own, that are:

\* \* \* \* \*

(b) You must exercise the RUE according to the terms of the grant and the regulations of this part, as well as the regulations in 30 CFR part 250, subpart Q.

(c) You must meet the qualification requirements at 30 CFR 556.400 through 556.402 and the financial assurance requirements in § 550.166 and 30 CFR part 556, subpart I.

\* \* \* \* \*

7. Revise § 550.166 to read as follows:

**§ 550.166 If BOEM grants me a RUE, what financial assurance must I provide?**

(a) Before BOEM grants you a RUE on the OCS, you must maintain financial assurance of \$500,000 that guarantees compliance with the regulations and the terms and conditions of the RUEs you hold.

(1) You are not required to submit and maintain the financial assurance of \$500,000 pursuant to this paragraph (a) if you furnish and maintain area-wide lease financial assurance in excess of \$500,000 pursuant to 30 CFR 556.901(a), provided that the area-wide lease financial assurance also guarantees compliance with all the terms and conditions of the RUEs you hold.

(2) The Regional Director may reduce the amount required in this paragraph (a) upon a determination that the reduced amount is sufficient to guarantee compliance with the regulations and the terms and conditions of the RUE grant.

(3) The requirements for financial assurance in 30 CFR 556.900(d) through (g) and 30 CFR 556.902 apply to the financial assurance required under this paragraph (a).

(b) If BOEM grants you a RUE that serves either an OCS lease or a State lease, the Regional Director may require supplemental financial assurance, above the amount required by paragraph (a) of this section, to ensure compliance with the obligations under your RUE grant based on an evaluation of your ability to carry out present and future obligations on the RUE using the criteria set forth in 30 CFR 556.901(d)(1) and (2). This supplemental financial assurance must:

(1) Meet the requirements of 30 CFR 556.900(d) through (g) and 30 CFR 556.902; and

(2) Cover costs and liabilities for compliance with regulations, compliance with BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) orders, and well abandonment, platform and structure removal, and site clearance of the seafloor of the RUE, in accordance with the regulations at 30 CFR part 250, subpart Q.

(c) If you fail to replace any deficient financial assurance upon demand or fail to provide supplemental financial assurance upon demand, the Regional Director may:

(1) Assess penalties under subpart N of this part;

(2) Request BSEE to suspend operations on your RUE; and/or

(3) Initiate action for cancellation of your RUE grant.

8. Add § 550.167 under the undesignated center heading “Right-of-Use and Easement” to read as follows:

**§ 550.167 How may I obtain or assign my interest in a RUE?**

(a) To obtain or assign a RUE, you must file an application and provide the information contained in § 550.161 and you must obtain BOEM’s approval.

(b) BOEM may disapprove an assignment in the following circumstances:

(1) When the assignee has unsatisfied obligations under the regulations in this chapter or in 30 CFR chapters II or XII, or under any BOEM or BSEE order;

(2) When an assignment is not acceptable as to form or content (*e.g.*, containing incorrect legal description, not executed by a person authorized to bind the corporation, assignee does not meet the requirements of 30 CFR 556.401 through 556.405);

(3) When the assignment does not comply with or would conflict with these regulations, or any other applicable laws or regulations (*e.g.*, Departmental debarment rules);

(4) When the assignee does not meet the applicable financial assurance requirements in § 550.166 and 30 CFR 556.900 through 556.907, or an order issued thereunder, with respect to the interest being assigned.

9. Amend § 550.199 by revising paragraph (b) to read as follows:

**§ 550.199 Paperwork Reduction Act statements - information collection.**

\* \* \* \* \*

(b) Respondents are OCS oil, gas, and sulfur lessees and operators. The requirement to respond to the information collections in this part is mandated under the Act (43 U.S.C. 1331 *et seq.*) and the Act's Amendments of 1978 (43 U.S.C. 1801 *et seq.*). Some responses are also required to obtain or retain a benefit or may be voluntary. Proprietary information will be protected under § 550.197, *Data and information to be made available to the public or for limited inspection*; 30 CFR parts 551 and 552; and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations at 43 CFR part 2.

\* \* \* \* \*

**Subpart J—Pipelines and Pipeline Rights-of-Way**

10. Revise § 550.1011 to read as follows:

**§ 550.1011 Financial assurance requirements for pipeline right-of-way (ROW) grant holders.**

(a) When you apply for, attempt to assign, or are the holder of a pipeline right-of-way (ROW) grant, you must furnish and maintain \$300,000 of area-wide financial assurance that guarantees compliance with the regulations and the terms and conditions of all the pipeline ROW

grants you hold in an OCS area as defined in 30 CFR 556.900(b). The requirement to furnish and maintain area-wide financial assurance for a pipeline ROW grant is separate and distinct from the requirement to provide financial assurance for a lease or right-of-use and easement (RUE).

(b) The requirement to furnish and maintain area-wide pipeline ROW financial assurance under paragraph (a) of this section may be satisfied if your operator or a co-grant holder provides such financial assurance in the required amount that guarantees compliance with the regulations and the terms and conditions of the grant.

(c) The requirements for lease financial assurance in 30 CFR 556.900(d) through (g) and 30 CFR 556.902 apply to the area-wide financial assurance required in paragraph (a) of this section.

(d) The Regional Director, using the criteria set forth in 30 CFR 556.901(d)(1) and (2), may require supplemental financial assurance (*i.e.*, above the amount required by paragraph (a) of this section) to ensure compliance with the obligations under your pipeline right-of-way grant based on an evaluation of your ability to carry out present and future obligations on the pipeline ROW.

(e) The supplemental financial assurance required under paragraph (d) of this section must:

- (1) Meet the requirements of 30 CFR 556.900(d) through (g) and 30 CFR 556.902, and
- (2) Cover costs and liabilities for regulatory compliance and compliance with BOEM and BSEE orders, decommissioning of all pipelines or other facilities, and clearance from the seafloor of all obstructions created by your pipeline ROW operations in accordance with the regulations at 30 CFR part 250, subpart Q.

(f) If you fail to replace any deficient financial assurance upon demand or fail to provide supplemental financial assurance upon demand, the Regional Director may:

- (1) Assess penalties under subpart N of this part;
- (2) Request BSEE to suspend operations on your pipeline ROW; and/or

(3) Initiate action for forfeiture of your pipeline ROW grant in accordance with 30 CFR 250.1013.

**PART 556—LEASING OF SULFUR OR OIL AND GAS AND FINANCIAL ASSURANCE REQUIREMENTS IN THE OUTER CONTINENTAL SHELF**

11. The authority citation for part 556 is revised to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 6213; 43 U.S.C. 1334.

12. Revise the heading to part 556 to read as set forth above.

**Subpart A—General Provisions**

13. Amend § 556.105 by:

- a. In paragraph (a), removing the acronym “EPA”; and
- b. In paragraph (b):
  - i. Adding the definition “Assign” in alphabetical order;
  - ii. Revising the definition “Eastern Planning Area”;
  - iii. Adding the definitions “Financial assurance”, “Investment grade credit rating”, and “Issuer credit rating” in alphabetical order;
  - iv. Revising the definition “Right-of-Use and Easement (RUE)”;
  - v. Removing the definition “Security or securities”;
  - vi. Adding the definition “Transfer”; and
  - vii. Revising the definition “You”.

The revisions and additions read as follows:

**§ 556.105 Acronyms and definitions.**

\* \* \* \* \*

(b) \* \* \*

*Assign* means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, “assign” is synonymous with “transfer” and the two terms are used interchangeably.

\* \* \* \* \*

*Eastern Planning Area* means that portion of the Gulf of Mexico that lies southerly and westerly of Florida.

\* \* \* \* \*

*Financial assurance* means a surety bond, a pledge of Treasury securities, a decommissioning account, a third-party guarantee, or another form of security acceptable to the BOEM Regional Director, that is used to ensure compliance with obligations under the regulations and under the terms of a lease, a RUE grant, or a pipeline ROW grant.

\* \* \* \* \*

*Investment grade credit rating* means an issuer credit rating of BBB- or higher, or its equivalent, assigned to an issuer of corporate debt by a nationally recognized statistical rating organization (NRSRO) as that term defined by the United States Securities and Exchange Commission (SEC).

\* \* \* \* \*

*Issuer credit rating* means a credit rating assigned to an issuer of corporate debt by Standard and Poor's (S&P) Rating Services (or any of its subsidiaries), by Moody's Investors Service Incorporated (or any of its subsidiaries), or by another NRSRO as that term is defined by the United States SEC.

\* \* \* \* \*

*Right-of-Use and Easement (RUE)* means a right to use a portion of the seabed at an OCS site other than on a lease you own, to construct, secure to the seafloor, use, modify, or maintain platforms, seafloor production equipment, artificial islands, facilities, installations, or other devices to support the exploration, development, or production of oil, gas, or sulfur resources from an OCS lease or a lease on State submerged lands adjacent to or accessible from the OCS.

\* \* \* \* \*

*Transfer* means to convey an ownership interest in an oil, gas, or sulfur lease, ROW grant or RUE grant. For the purposes of this part, “transfer” is synonymous with “assign” and the two terms are used interchangeably.

\* \* \* \* \*

*You*, depending on the context of the regulations, means a bidder, a lessee (record title owner), a sublessee (operating rights owner), a Federal or State RUE grant holder, a pipeline ROW grant holder, an assignor or transferor, a designated operator or agent of the lessee or grant holder, or an applicant seeking to become one of the above.

### **Subpart G—Transferring All or Part of the Record Title Interest in a Lease**

14. Amend § 556.704 by revising the section heading, and paragraphs (a) introductory text and (a)(1) to read as follows:

#### **§ 556.704 When may BOEM disapprove an assignment or sublease of an interest in my lease?**

(a) BOEM may disapprove an assignment or sublease of all or part of your lease interest(s):

(1) When the transferor, transferee, or sublessee is not in compliance with all applicable regulations and orders, including financial assurance requirements;

\* \* \* \* \*

## **Subpart H—Transferring All or Part of the Operating Rights in a Lease**

15. Amend § 556.802 by revising the section heading, introductory text, and paragraph (a) to read as follows:

### **§ 556.802 When may BOEM disapprove the transfer of all or part of my operating rights interest?**

BOEM may disapprove a transfer of all or part of your operating rights interest:

(a) When the transferee is not in compliance with all applicable regulations and orders, including financial assurance requirements;

\* \* \* \* \*

## **Subpart I—Bonding or Other Financial Assurance**

16. Amend § 556.900 by:

- a. Revising the section heading and introductory text;
- b. Revising paragraph (a)(3), and adding paragraph (a)(4);
- c. Revising paragraphs (g) introductory text and (h); and
- d. Adding paragraph (i).

The revisions and additions read as follows:

### **§ 556.900 Financial assurance requirements for an oil and gas or sulfur lease.**

This section establishes financial assurance requirements for the lessee of an OCS oil and gas or sulfur lease.

(a) \* \* \*

- (3) Maintain a lease or area-wide bond in the amount required in § 556.901(a) or (b); and
- (4) Provide any supplemental financial assurance required by the Regional Director.

\* \* \* \* \*

(g) You may provide alternative types of financial assurance instead of providing a surety bond if the Regional Director determines that the alternative financial assurance protects the interests of the United States to the same extent as a surety bond.

\* \* \* \* \*

(h) If you fail to replace deficient financial assurance or to provide supplemental financial assurance upon demand, the Regional Director may:

(1) Assess penalties under part 550, subpart N of this subchapter;

(2) Request BSEE to suspend production and other operations on your lease in accordance with 30 CFR 250.173; and/or

(3) Initiate action to cancel your lease.

(i) In the event you amend your area-wide surety bond covering lease obligations, or obtain a new area-wide lease surety bond, to cover the financial assurance requirements for any RUE(s), your area-wide lease surety bond may be called in whole or in part to cover any or all the obligations on which you default that are associated with your RUE(s) located in the area covered by such area-wide lease surety bond.

17. Amend § 556.901 by:

a. Revising the section heading;

b. Revising paragraphs (a) introductory text and (a)(1)(i);

c. Revising paragraphs (b) introductory text and (b)(1)(i);

d. Revising paragraphs (c) through (f); and

e. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

**§ 556.901 Base financial assurance and supplemental financial assurance.**

(a) This paragraph (a) explains what financial assurance you must provide before lease exploration activities commence.

(1) \* \* \*

(i) You must furnish the Regional Director \$200,000 in lease exploration financial assurance that guarantees compliance with all the terms and conditions of the lease by the earliest of:

\* \* \* \* \*

(b) This paragraph (b) explains what financial assurance you must provide before lease development and production activities commence.

(1) \* \* \*

(i) You must furnish the Regional Director \$500,000 in lease development financial assurance that guarantees compliance with all the terms and conditions of the lease by the earliest of:

\* \* \* \* \*

(c) If you can demonstrate to the satisfaction of the Regional Director that you can satisfy your decommissioning and other lease obligations for less than the amount of financial assurance required under paragraphs (a)(1) or (b)(1) of this section, the Regional Director may accept financial assurance in an amount less than the prescribed amount but not less than the amount of the cost for decommissioning.

(d) The Regional Director may determine that supplemental financial assurance (*i.e.*, financial assurance above the amounts prescribed in 30 CFR 550.166(a), 30 CFR 550.1011(a), § 556.900(a) or paragraphs (a) and (b) of this section) is required to ensure compliance with your lease obligations, including decommissioning obligations; the regulations in this chapter; and the regulations in 30 CFR chapters II and XII. The Regional Director may require you to provide supplemental financial assurance if you do not meet at least one of the following criteria:

(1) You have an Investment grade issuer credit rating. If any SEC-recognized NRSRO provides a credit rating that differs from any other SEC-recognized NRSRO credit rating, BOEM will apply the highest rating for the purposes of determining your financial assurance requirements.

(2) You have a proxy credit rating determined by the Regional Director, which must be based on audited financial information for the most recent fiscal year (which must include an income statement, balance sheet, statement of cash flows, and the auditor's certificate).

(i) The audited financial information for your most recent fiscal year must cover a continuous twelve-month period within the twenty-four-month period prior to the lessee's receipt of the Regional Director's determination that you must provide supplemental financial assurance.

(ii) In determining your proxy credit rating, the Regional Director may include the value of the contingent liabilities associated with any lease(s) or grants in which you have an ownership interest. Upon the request of the Regional Director, you must provide the information that the Regional Director determines is necessary to properly evaluate your contingent liabilities, including joint ownership interests and liabilities associated with your OCS leases and grants.

(3) Your co-lessee or co-grant-holder has an issuer credit rating or a proxy credit rating that meets the criteria set forth in paragraph (d)(1) of this section; however, the Regional Director may require you to provide supplemental financial assurance for decommissioning obligations for which such co-lessee or co-grant-holder is not liable.

(4) There are proved oil and gas reserves on the lease, as defined by the SEC Regulation S-X at 17 CFR 210.4-10 and SEC Regulation S-K at 17 CFR 229.1200, the value of which exceeds three times the estimated cost of the decommissioning associated with the production of those reserves, and that value must be based on reserve reports submitted to the Regional Director and reported on a per-lease basis. BOEM will determine the decommissioning costs associated with the production of your reserves on a per-lease basis, and will use the following decommissioning cost estimates:

(i) Where BSEE-generated probabilistic estimates are available, BOEM will use the estimate at the level at which there is a 70 percent probability that the actual cost of decommissioning will be less than the estimate (P70).

(ii) If there is no BSEE probabilistic estimate available, BOEM will use the BSEE-generated deterministic estimate.

(e) You may satisfy the Regional Director's demand for supplemental financial assurance by increasing the amount of your existing financial assurance or providing additional surety bonds or other types of acceptable financial assurance.

(f) The Regional Director will determine the amount of supplemental financial assurance required to guarantee compliance. In making this determination, the Regional Director will consider potential underpayment of royalty and cumulative decommissioning obligations using the methodology set forth in paragraph (d)(3) of this section.

(g) If your cumulative potential obligations and liabilities either increase or decrease, the Regional Director may adjust the amount of supplemental financial assurance required.

(1) If the Regional Director proposes an adjustment, the Regional Director will:

(i) Notify you and your financial assurance provider of any proposed adjustment to the amount of financial assurance required; and

(ii) Give you an opportunity to submit written or oral comment on the adjustment.

(2) If you request a reduction of the amount of supplemental financial assurance required, or oppose the amount of a proposed adjustment, you must submit evidence to the Regional Director demonstrating that the projected amount of royalties due to the United States Government and the estimated costs of decommissioning are less than the required financial assurance amount. Upon review of your submission, the Regional Director may reduce the amount of financial assurance required.

(h) At any time during the first three years from the effective date of this regulation, you may request that the Regional Director allow you to provide, in three equal installments payable according to the schedule provided under this paragraph (h), the full amount of supplemental financial assurance required.

(1) If the Regional Director allows you to provide the amount required on such a phased basis, you must comply with the following:

(i) You must provide the initial one-third of the total supplemental financial assurance required within the timeframe specified in the demand letter or, if no timeframe is specified, within 60 calendar days of the date of receipt of the demand letter.

(ii) You must provide the second one-third of the required supplemental financial assurance to BOEM within 24 months of the date of receipt of the demand letter.

(iii) You must provide the final one-third of the required supplemental financial assurance to BOEM within 36 months of the date of receipt of the demand letter.

(2) If the Regional Director allows you to meet your supplemental financial assurance requirement in a phased manner, as set forth in this section, and you fail to timely provide the required supplemental financial assurance to BOEM, the Regional Director will notify you of such failure. You will no longer be eligible to meet your supplemental financial assurance requirement in the manner prescribed in this paragraph (h), and the remaining amount due will become due 10-calendar days after such notification is received.

18. Amend § 556.902 by revising the section heading, paragraphs (a) and (e)(2), and adding paragraphs (g) and (h) to read as follows:

**§ 556.902 General requirements for bonds or other financial assurance.**

(a) Any surety bond or other financial assurance that you, as record title owner, operating rights owner, grant holder, or operator, provide under this part, or under 30 CFR part 550, must:

(1) Be payable upon demand to the Regional Director;

(2) Guarantee compliance with all your obligations under the lease or grant, the regulations under 30 CFR chapters II and XII, and all BOEM and BSEE orders; and

(3) Guarantee compliance with the obligations of all record title owners, operating rights owners, and operators on the lease, and all grant-holders on a grant.

\* \* \* \* \*

(e) \* \* \*

(2) A pledge of Treasury securities as provided in § 556.900(f).

\* \* \* \* \*

(g) If you believe that BOEM's supplemental financial assurance demand is unjustified, you may request an informal resolution of your dispute in accordance with the requirements of 30 CFR 590.6. Your request for an informal resolution will not affect your right to request to meet your supplemental financial assurance requirement in a phased manner under § 556.901(h).

(h) You may file an appeal of a supplemental financial assurance demand with the Interior Board of Land Appeals (IBLA) pursuant to the regulations in 30 CFR part 590. However, if you request that the IBLA stay the demand pending a final ruling on your appeal, you must post an appeal surety bond equal to the amount of the demand that you seek to stay before any such stay is effective.

19. Revise § 556.903 to read as follows:

**§ 556.903 Lapse of financial assurance.**

(a) If your surety, guarantor, or the financial institution holding or providing your financial assurance becomes bankrupt or insolvent, or has its charter or license suspended or revoked, any financial assurance coverage from such surety, guarantor, or financial institution must be replaced. You must notify the Regional Director within 7 calendar days of learning of such event, and, within 30 calendar days of learning of such event, you must provide other financial assurance from a different financial assurance provider in the amount required under §§ 556.900, 556.901, 30 CFR 550.166, or 30 CFR 550.1011.

(b) You must notify the Regional Director within 72 hours of learning of any action filed alleging that you are insolvent or bankrupt or that your surety, guarantor, or financial institution is insolvent or bankrupt or has had its charter or license suspended or revoked. All surety bonds or other financial assurance must require the surety, guarantor, or financial institution to timely provide this required notification both to you and directly to BOEM.

20. Revise § 556.904 to read as follows:

**§ 556.904 Decommissioning accounts.**

(a) The Regional Director may authorize you to establish a decommissioning account(s) in a federally insured financial institution to satisfy a supplemental financial assurance demand made pursuant to § 556.901(d), 30 CFR 550.166(b) or 30 CFR 550.1011(d). The decommissioning account must be set up in such a manner that funds may not be withdrawn without the written approval of the Regional Director.

(1) Funds in the account must be pledged to meet your decommissioning obligations and payable upon demand to BOEM.

(2) You must fully fund the account, pursuant to a schedule that the Regional Director prescribes, to cover all decommissioning costs estimated by BSEE.

(3) If you fail to make the initial payment or any scheduled payment into the decommissioning account, you must immediately submit, and subsequently maintain, a surety bond or other financial assurance in an amount equal to the remaining unfulfilled portion of the supplemental financial assurance demand.

(b) Any interest paid on funds in a decommissioning account will become part of the principal funds in the account unless the Regional Director authorizes in writing the payment of the interest to the party who deposits the funds.

(c) The Regional Director may require you to create an overriding royalty, production payment obligation, or other revenue stream for the benefit of an account established as financial assurance for the decommissioning of your lease(s) or RUE or pipeline right-of-way grant(s). The required obligation may be associated with oil and gas or sulfur production from a lease other than a lease or grant secured through the decommissioning account.

(d) BOEM may provide funds from the decommissioning account to the liable party that performs the decommissioning to cover the costs thereof.

21. Revise § 556.905 to read as follows:

**§ 556.905 Third-party guarantees.**

(a) The Regional Director may accept a third-party guarantee to satisfy a supplemental financial assurance demand made pursuant to § 556.901(d), 30 CFR 550.166(b), or 30 CFR 550.1011(d), if:

(1) The guarantor meets the credit rating or proxy credit rating criterion set forth in § 556.901(d)(1); and

(2) The guarantor or guaranteed party submits a third-party guarantee agreement containing each of the provisions in paragraph (d) of this section.

(b) A third-party guarantor may limit its cumulative obligations to a fixed dollar amount as agreed to by BOEM at the time the third-party guarantee is provided.

(c) If, during the life of your third-party guarantee, your guarantor no longer meets the criterion referred to in paragraph (a)(1) of this section, you must, within 72 hours of so learning:

(1) Notify the Regional Director; and

(2) Submit, and subsequently maintain a surety bond or other financial assurance covering those obligations previously secured by the third-party guarantee.

(d) Your third-party guarantee must contain each of the following provisions:

(1) If you fail to comply with the terms of any lease or grant covered by the guarantee, or any applicable regulation, your guarantor must either:

(i) Take corrective action to bring the lease or grant into compliance with its terms or any applicable regulation, to the extent covered by the guarantee; or

(ii) Be liable under the third-party guarantee agreement to provide, within seven calendar days, sufficient funds for the Regional Director to complete such corrective action to the extent covered by the guarantee. Such payment does not result in the cancellation of the guarantee, and instead reduces the remaining value of the guarantee in an amount equal to the payment.

(2) If your guarantor wishes to terminate the period of liability under its guarantee, it must:

(i) Notify you and the Regional Director at least 90-calendar days before the proposed termination date;

(ii) Obtain the Regional Director's approval for the termination of the period of liability for all or a specified portion of the guarantee; and

(iii) Remain liable for all liabilities that accrued prior to the termination and responsible for all work and workmanship performed during the period of liability.

(3) Before the termination of the period of liability of the third-party guarantee, you must provide acceptable replacement financial assurance.

(e) If you or your guarantor request BOEM to cancel your third-party guarantee, BOEM will cancel the guarantee under the same terms and conditions provided for cancellation of supplemental financial assurance and return of pledged financial assurance in § 556.906, paragraphs (b) and/or (d)(3).

(f) The guarantor or guaranteed party must submit a third-party guarantee agreement that meets the following criteria:

(1) The third-party guarantee agreement must be executed by your guarantor and all persons and parties bound by the agreement.

(2) The third-party guarantee agreement must bind, jointly and severally, each person and party executing the agreement.

(3) When your guarantor is a corporate entity, two corporate officers who are authorized to bind the corporation must sign the third-party guarantee agreement.

(g) Your corporate guarantor and any other corporate entities bound by the third-party guarantee agreement must provide the Regional Director copies of:

(1) The authorization of the signatory corporate officials to bind their respective corporations;

(2) An affidavit certifying that the agreement is valid under all applicable laws; and

(3) Each corporation's corporate authorization to execute the third-party guarantee agreement.

(h) If your third-party guarantor or another party bound by the third-party guarantee agreement is a partnership, joint venture, or syndicate, the third-party guarantee agreement must:

- (1) Bind each partner or party who has a beneficial interest in your guarantor; and
- (2) Provide that each member of the partnership, joint venture, or syndicate is jointly and severally liable for those obligations secured by the guarantee.

(i) When forfeiture is called for under § 556.907, the third-party guarantee agreement must provide that your guarantor will either:

(1) Take corrective action to bring your lease or grant into compliance with its terms, and the regulations, to the extent covered by the guarantee; or

(2) Provide sufficient funds within seven calendar days to permit the Regional Director to complete such corrective action to the extent covered by the guarantee.

(j) The third-party guarantee agreement must contain a confession of judgment. It must provide that, if the Regional Director determines that you are in default of the lease or grant covered by the guarantee or not in compliance with any regulation applicable to such lease or grant, the guarantor:

- (1) Will not challenge the determination; and
- (2) Will remedy the default to the extent covered by the guarantee.

(k) Each third-party guarantee agreement is deemed to contain all terms and conditions contained in paragraphs (d), (f), and (j) of this section, even if the guarantor has omitted these terms from the third-party guarantee agreement.

22. Revise § 556.906 to read as follows:

**§ 556.906 Termination of the period of liability and cancellation of financial assurance.**

This section defines the terms and conditions under which BOEM will terminate the period of liability of financial assurance. Terminating the period of liability ends the period

during which obligations continue to accrue, but does not relieve the financial assurance provider of the responsibility for obligations that accrued during the period of liability. Canceling a financial assurance instrument relieves the financial assurance provider of all liability. The liabilities that accrue during a period of liability include obligations that started to accrue prior to the beginning of the period of liability and had not been met, and obligations that begin accruing during the period of liability.

(a) When you or your financial assurance provider request termination:

(1) The Regional Director will terminate the period of liability under your financial assurance within 90 calendar days after BOEM receives the request; and

(2) If you intend to continue operations, or have not met all decommissioning obligations, you must provide replacement financial assurance of an equivalent amount.

(b) If you provide replacement financial assurance, the Regional Director will cancel your previous financial assurance and the previous financial assurance provider will not retain any liability, provided that:

(1) The amount of the new financial assurance is equal to or greater than that of the financial assurance that was cancelled, or you provide an alternative form of financial assurance, and the Regional Director determines that the alternative form of financial assurance provides a level of security equal to or greater than that provided by the financial assurance that was cancelled;

(2) For financial assurance submitted under § 556.900(a), § 556.901(a) or (b), 30 CFR 550.166(a), or 30 CFR 550.1011(a) the new financial assurance provider agrees to assume all outstanding obligations that accrued during the period of liability that was terminated; and

(3) For supplemental financial assurance submitted under § 556.901(d), 30 CFR 550.166(b), or 30 CFR 550.1011(d), the issuer of such financial assurance agrees to assume that portion of the outstanding obligations that accrued during the period of liability that was terminated and that the Regional Director determines may exceed the coverage of the base

financial assurance. The Regional Director will notify the provider of the new financial assurance of the amount required.

(c) This paragraph (c) applies if the period of liability is terminated, but the financial assurance is not replaced with an equivalent amount. The financial assurance provider will continue to be responsible for accrued obligations:

(1) Until the obligations are satisfied; and

(2) For additional periods of time in accordance with paragraph (d) of this section.

(d) BOEM will cancel the financial assurance for your lease or grant, and the Regional Director will return any pledged financial assurance, as shown in the following:

Table 1 to paragraph (d)

<b>For the following:</b>	<b>Your financial assurance will be reduced or cancelled, or your pledged financial assurance will be returned:</b>
(1) Financial assurance submitted under § 556.900(a), § 556.901(a) or (b), 30 CFR 550.166(a), or 30 CFR 550.1011(a).	7 years after the lease or grant expires or is terminated, 6 years after the Regional Director determines that you have completed all covered obligations, or at the conclusion of any appeals or litigation related to your covered obligations, whichever is the latest. The Regional Director will reduce the amount of your financial assurance or return a portion of your pledged financial assurance if the Regional Director determines that you need less than the full amount of the financial assurance or pledged financial assurance to cover any potential obligations.
(2) Financial assurance submitted under § 556.901(d), 30 CFR 550.166(a), or 30 CFR 550.1011(d).	(i) When the lease or grant expires or is terminated and the Regional Director determines you have met your covered obligations, unless the Regional Director: (A) Determines that the future potential liability resulting from any undetected problem is greater than the amount of the financial assurance submitted under § 556.900(a), § 556.901(a) or (b), 30 CFR 550.166(a), or 30 CFR 550.1011(a); and (B) Notifies the provider of financial assurance submitted under § 556.901(d), 30 CFR 550.166(b), or 30 CFR 550.1011(d) that the Regional Director will wait 7 years before canceling all or a part of such financial assurance (or longer period as necessary to complete any appeals or judicial litigation related to your secured obligations). (ii) At any time when:

	<p>(A) BOEM has determined, using the criteria set forth in § 556.901(d)(1) of this part, as applicable, that you no longer need to provide the supplemental financial assurance for your lease, RUE grant, or pipeline ROW grant.</p> <p>(B) The operations for which the supplemental financial assurance was provided ceased prior to accrual of any decommissioning obligation; or,</p> <p>(C) Cancellation of the financial assurance is appropriate because, under the regulations, BOEM determines such financial assurance never should have been required.</p>
(3) Third-party Guarantee under § 556.901(d), 30 CFR 550.166(b), or 30 CFR 550.1011(d).	When the Regional Director determines you have met your obligations secured by the guarantee (or longer period as necessary to complete any appeals or judicial litigation related to your obligations secured by the guarantee).

(e) For all financial assurance, the Regional Director may reinstate your financial assurance as if no cancellation had occurred if:

(1) A person makes a payment under the lease, RUE grant, or pipeline ROW grant, and the payment is rescinded or must be returned by the recipient because the person making the payment is insolvent, bankrupt, subject to reorganization, or placed in receivership; or,

(2) The responsible party represents to BOEM that it has discharged its obligations under the lease, RUE grant, or pipeline ROW grant and the representation was materially false when the financial assurance was cancelled.

23. Revise § 556.907 to read as follows:

**§ 556.907 Forfeiture of bonds or other financial assurance.**

This section explains how a bond or other financial assurance may be forfeited.

(a) The Regional Director will call for forfeiture of all or part of the bond, or other form of financial assurance, including a guarantee you provide under this part, if:

(1) You, or any party with the obligation to comply refuse to comply with any term or condition of your lease, RUE grant, pipeline ROW grant, or any applicable regulation, or the Regional Director determines that you are unable to so comply; or

(2) You default on one of the conditions under which the Regional Director accepts your bond, third-party guarantee, and/or other form of financial assurance.

(b) The Regional Director may pursue forfeiture of your surety bond or other financial assurance without first making demands for performance against any other record title owner, operating rights owner, grant holder, or other person authorized to perform lease or grant obligations.

(c) The Regional Director will:

(1) Notify you, your surety, guarantor, or the financial institution holding or providing your financial assurance, of a determination to call for forfeiture of your financial assurance, whether it takes the form of a surety bond, guarantee, funds, or other type of financial assurance.

(i) This notice will be in writing and will provide the reason for the forfeiture and the amount to be forfeited.

(ii) The Regional Director will determine the amount to be forfeited based upon an estimate of the total cost of corrective action to bring your lease or grant into compliance, subject in the case of a guarantee to any limitation in the guarantee authorized by § 556.902(a)(3).

(2) Advise you and your financial assurance provider that forfeiture may be avoided if, within five business days:

(i) You agree to and demonstrate that you will bring your lease or grant into compliance within the timeframe the Regional Director prescribes; or

(ii) The provider of your financial assurance agrees to and demonstrates that it will complete the corrective action to bring your lease or grant into compliance within the timeframe the Regional Director prescribes, even if the cost of compliance exceeds the amount of that financial assurance.

(d) If the Regional Director finds you are in default, the Regional Director may cause the forfeiture of any financial assurance provided to ensure your compliance with the terms and

conditions of your lease or grant and the regulations in this chapter and 30 CFR chapters II and XII.

(e) If the Regional Director determines that your financial assurance is forfeited, the Regional Director will:

- (1) Collect the forfeited amount; and
- (2) Use the funds collected to bring your lease or grant into compliance and to correct any default.

(f) If the amount the Regional Director collects under your financial assurance is insufficient to pay the full cost of corrective actions, the Regional Director may:

- (1) Take or direct action to obtain full compliance with your lease or grant and the regulations in this chapter; and
- (2) Recover from you, any co-lessee, operating rights owner, grant holder or, to the extent covered by the guarantee, any third-party guarantor responsible under this subpart, all costs in excess of the amount the Regional Director collects under your forfeited financial assurance.

(g) If the amount that the Regional Director collects under your forfeited financial assurance exceeds the cost of taking the corrective action required to bring your lease or grant into compliance with its terms and the regulations in this chapter and 30 CFR chapters II and XII, the Regional Director will return the excess funds to the party from whom they were collected.

(h) The Regional Director may pay the funds from the forfeited financial assurance to a co- or predecessor lessee or third party who is taking the corrective action required to obtain partial or full compliance with the regulations and the terms of your lease or grant.

## **Subchapter C—Appeals**

### **PART 590—APPEAL PROCEDURES**

24. The authority citation for part 590 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1334.

## **Subpart A—Offshore Minerals Management Appeal Procedures**

25. Amend § 590.4 by adding paragraph (c) to read as follows:

### **§ 590.4 How do I file an appeal?**

\* \* \* \* \*

(c) You may file an appeal of a BOEM supplemental financial assurance demand with the IBLA. However, if you request that the IBLA stay the demand pending a final ruling on your appeal, you must post an appeal surety bond equal to the amount of the demand that you seek to stay before any such stay is effective.

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